United States Court of Appeals

for the Second Circuit

APPENDIX

B
P/S.

75-1057

IN THE

United States Court of Appeals

For the Second Circuit

No. 75-1057

UNITED STATES OF AMERICA,

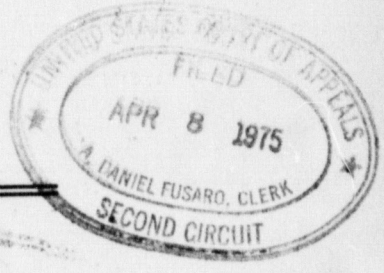
Plaintiff-Appellee,

against

IRA FEINBERG,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



APPELLANT'S APPENDIX

Vol. II Pages 325A-692A

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AFTERNOON SESSION

[2:00 p.m.]

[Jury embarks:]

MR. WILSON: I am only up here, your Honor, because Mr. Seidman has asked for something which I am looking for.

THE COURT: All right.

MICHAEL WERNER, resumed.

CROSS-EXAMINATION [continued]

BY MR. SEIDMAN:

Q Mr. Werner, when we left at the close of the morning session, you had indicated and testified that Mr. Ezrine told you that Mr. Greenberg would represent the underwriter for purposes of the Manor Nursing Centers public issue; is that right?

A That is correct.

Q I can't hear you.

A Yes.

Q Also, you testified that you had implicit faith and trust in anything that Mr. Ezrine said to you; is that right?

A That is correct.

Q Was that implicit faith and trust as a result of prior dealings and relationships between Mr. Ezrine

and yourself?

A That is correct.

Q You testified that Mr. Ezrine was not merely your attorney but also was a customer of Benjamin Werner &Co.; is that correct?

A Yes.

Q Did he have an account with you in the name of Ivan Ezrine?

A Yes.

Q Did he have an account with you in the name of Ivan Ezrine as an attorney?

A Yes.

Q Did he also have accounts with you in corporate names?

A Yes.

Q Did he have an account with you in the name of Glendale --

THE COURT: Inc.

Q [continuing] -- Inc.?

A Yes.

Q Did that account, Glendale, Inc., exist prior to the Manor Nursing Homes underwriting?

A Yes.

Q Had Mr. Ezrine used his Glendale, Inc. account

at your firm with respect to the purchase and sale of stock prior to the Manor deal?

A Yes.

Q Would it be correct to state that millions of dollars of purchases and sales went through the Glendale, Inc. account at your company prior to the Manor Nursing Centers deal?

A Yes.

Q Would it be correct to state that possibly tens of millions of dollars went through the Glendale, Inc. account at Benjamin Werner?

A No.

Q Would it be correct to say, then, that between one million and ten million dollars worth of transactions went through Ivan Ezrine's Glendale, Inc. account?

A No.

Q Millions of dollars --

THE COURT: Give us an approximation of what --

THE WITNESS: I would say about a million dollars.

THE COURT: All right.

MR. WILSON: During what period of time? Over what period of time?

THE WITNESS: From the time I started in

business.

THE COURT: 1962?

THE WITNESS: '62 to '71.

THE COURT: '71?

Q Did Mr. Ezrine have --

THE COURT: Wait. I think that Mr. Seidman's questions are related to the period prior to the underwriting.

THE WITNESS: '70, I'll say.

THE COURT: Or late 1969?

THE WITNESS: '69.

Q Did Mr. Ezrine have an account with you in the name of Great Oil Basin Corporation or a name similar to that?

A It rings a bell, yes.

Q And would it also be correct to state that through that account, that corporate account that Mr. Ezrine had at your place of business, millions of dollars worth of transactions may have passed through?

A No.

THE COURT: Not "may have".

Q Did pass through ?

A No.

Q Did hundreds of thousands of dollars?

A No.

Q But hundreds of transactions?

A Maybe fifteen, tops.

THE COURT: An inactive account?

THE WITNESS: Very inactive.

Q Did Mr. Ezrine have an account with Benjamin Werner & Co. under the name of Lausanne Investment Company?

A Is this prior to 1970?

Q Prior to the Manor deal.

A Manor Nursing. No; I don't think so.

Q Did Mr. Ezrine open an account at or about that time in the name of Lausanne?

A Yes.

Q Did Mr. Ezrine use that account for purposes of stock transactions at your company?

A Yes.

Q Did he use that account for the purposes of stock transactions?

THE COURT: Do you mean, as distinct from bonds or what?

MR. SEIDMAN: He may have acted in other capacities.

THE WITNESS: Can I say something?

THE COURT: Well, if it wasn't for transactions in stock --

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THE WITNESS: I can have the answer at the tip of my tongue if I can get the ledger sheets.

MR. SEIDMAN: May I get the ledger sheets in?

THE WITNESS: It will tell the whole facts.

MR. SEIDMAN: If your Honor please, to save time, might I ask the witness to please go through his ledger sheets and pick out all of the accounts of Ivan Ezrine, either in his own name or in nominee account names, corporate names or any other name with respect to his letter --

THE COURT: Whether it will save time or not, doesn't somebody remember what the names of those accounts were?

MR. SEIDMAN: I don't believe as part of my question that Mr. Wilson has gone into that.

THE COURT: How long will that take?

MR. SEIDMAN: Maybe five minutes.

THE COURT: I didn't ask you that question, Mr. Seidman. I am asking the man who is going to do it.

THE WITNESS: Five minutes.

THE COURT: All right.

MR. SEIDMAN: May I ask that this be marked for identification as Defendant Feinberg Exhibit G.

[Defendant Feinberg Exhibit G marked for

identification.]

THE COURT: Gentlemen, may I suggest, even if it is going to take only five minutes -- and I hope it will not take more, Mr. Werner -- but do it right -- that the jury be allowed to retire, and I will wait in the robing room.

[The jury left the courtroom.]

MR. SEIDMAN: Mr. Reporter, please read the last question.

[Question read.]

Q Only.

THE COURT: First tell me which company we are talking about.

MR. SEIDMAN: Lausanne.

A Whatever the ledger sheet shows.

Q Pardon me?

A Whatever the ledger sheet shows.

THE COURT: Can you refresh your recollection from the ledger sheet?

THE WITNESS: Yes.

THE COURT: Will you please furnish him with it.

MR. SEIDMAN: Before I do that, your Honor, I would like to pursue the questioning, if I may.

THE COURT: Certainly. I thought you wanted an answer to that question.

MR. SEIDMAN: No. I do, but permit me to do this first.

THE COURT: All right.

Q Did there ever come a time, Mr. Werner, when Mr. Ezrine would give you checks for large sums of money that he asked you to cash or deposit through your business?

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A Not that I recall. No, the answer is no.

THE COURT: Just so we are sure we are talking in the same terms, what is your assumed definition of large?

THE WITNESS: Ten thousand, twenty thousand, fifty thousand.

THE COURT: Five figures?

THE WITNESS: Five figures.

Q Did you sign an underwriting agreement with Manor Nursing Centers, Inc. whereby you agreed to act as the underwriter for the stock?

A Yes, sir.

Q Can you tell us, if you know, who drafted that agreement?

A Mr. Ezrine.

Q Would you tell us if you know, who delivered that agreement to you for the signature of Benjamin Werner & Company?

THE WITNESS: Can I correct him? It is Benjamin Werner Company, not "& Company".

Q I stand corrected, Mr. Werner.

A Mr. Ezrine.

Q Up until that time had you met Mr. Feinberg?

A No, I did not.

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Q Up until that time had you spoken to Mr. Feinberg about the terms of the Benjamin Werner Company's underwriting agreement to sell the Manor Nursing Centers, Inc. stock?

A I did not.

Q Under the terms of the underwriting agreement did you or your company, in essence, agree to attempt to sell the Manor Nursing Center's, Inc. stock on an all or nothing basis?

A Yes.

Q Is it correct to state, Mr. Werner, that Benjamin Werner & Company --

THE COURT: It isn't "& Company".

MR. SEIDMAN: Pardon me.

THE COURT: There is a legal difference, ladies and gentlemen. That is why we are talking about that.

Q Benjamin Werner Company was the entity or structure or business that was holding itself out to the public for which the public could obtain Manor Nursing Centers, Inc. stock, if it wished?

A Yes.

Q Is it also correct to state, Mr. Werner, that if the public wished to purchase Manor Nursing Centers stock that they would have to subscribe their name to an agreement

addressed to Benjamin Werner Company whereby anyone in the public would state that they agreed to purchase X amount of shares at X dollars --

THE COURT: At $10.

Q -- at $10 of Manor Nursing Centers stock through your company?

A Yes.

Q Is it not correct to state, Mr. Werner, that Benjamin Werner Company, pursuant to the underwriting agreement, agreed to sell all of the 450,000 shares of Manor Nursing Centers stock on an all or nothing basis to the public?

A Yes.

THE COURT: Wait a minute. Did you agree to sell all of it or agree to attempt to sell all of it?

THE WITNESS: Agreed to attempt to sell all of it.

THE COURT: It is a different thing to agree to sell all of it or agree to attempt to sell all of it.

MR. SEIDMAN: Very well.

Q And Mr. Ezrine prepared that agreement for you?

A Yes.

Q At that point were you represented by Mr. Harold Greenberg?

A No.

Q Therefore, is it correct to state that Ivan A. Ezrine, for purposes of the underwriting agreement, was both the attorney for Manor Nursing Centers, Inc. and Benjamin Werner Company?

A Repeat that question.

MR. WILSON: I will object to it.

THE COURT: I think it calls for a legal conclusion, frankly.

MR. SEIDMAN: I could rephrase it.

THE COURT: Did you ever retain Mr. Ezrine to represent your company?

THE WITNESS: No.

Q Were you relying on Mr. Ezrine as an attorney for the purposes of signing the underwriting agreement involving Manor Nursing Centers, Inc. stock?

A At that time, yes.

THE COURT: When you say you were relying on him, do you mean that you believed that knew what he was doing and that he was dependable?

THE WITNESS: Exactly.

THE COURT: But that doesn't mean that he was your lawyer?

THE WITNESS: No.

MR. SEIDMAN: If your Honor please, I object to

that. I believe the witness did answer that he was acting for purposes of the underwriting.

THE COURT: He did not, and I wanted to find out if my understanding was correct.

Q Did you feel that you didn't need a lawyer because Ivan Ezrine, a lawyer and your friend, had prepared the underwriting agreement for purposes --

MR. WILSON: Objection.

THE COURT: Sustained. He has indicated that he did rely on Mr. Ezrine, but I want the jury to understand what the witness means when he said that.

Q Did you go to another lawyer to review that underwriting agreement before you signed it?

A I did not.

Q At that time did you know that Ivan Ezrine was an attorney?

A Yes.

Q At that time had you had prior business dealings with him?

A Yes.

MR. WILSON: Objection, asked and answered.

THE COURT: Yes. I will overrule the objection, but a lot of this territory has been covered by you, Mr. Seidman.

Q So, therefore, Benjamin Werner Company held itself out as the underwriting agent through which the public had purchased Manor Nursing Centers, Inc. stock on or about December 8, 1969 through February 20, 1970; is that right?

A That is incorrect. I did not purchase any stock.

THE COURT: I didn't say that you did, but that the public could purchase.

It has already been established, it seems to me just a few minutes ago, that he signed the underwriting agreement which told the public that they could get the stock through him.

Is that right?

THE WITNESS: Exactly.

Q Was it also the function of Benjamin Werner Company to obtain as part of the underwriting agreement the availability of other broker-dealers for purposes of acting as agent for the sale of the Manor Nursing Centers, Inc. stock?

A Yes.

Q Did you, Benjamin Werner Company, obtain the services of any other broker-dealers for purposes of selling the Manor Nursing Centers stock pursuant to the underwriting agreement?

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THE WITNESS: Sometime in December, your Honor.

THE COURT: '69?

Q Of '69?

A '69.

Q On February 20, 1970, did you still have implicit faith in Mr. Ezrine?

MR. WILSON: Objection.

A Yes, I did.

THE COURT: Overruled.

Q By the way, when did you cease to do business as a broker dealer under the name of Benjamin Werner & Company?

MR. WILSON: Objection.

THE COURT: Sustained.

Q Did you still have implicit faith in Ivan Ezrine on April 1, 1970?

THE COURT: Sustained.

Q Who was Rubin Waldman?

A Rubin Waldman was a very close friend of Ivan Ezrine's and a friend of mine. I met Mr. Rubin Waldman --

THE COURT: That is who he was. That is all the question was.

Q Do you know what his business was?

A A salesman.

THE COURT: Of what?

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THE WITNESS: I think ladies' apparel.

Q And had you known Rubin Waldman before he came to speak to you on behalf of Ivan Ezrine?

A I met Mr. Rubin Waldman at Mr.Ezrine's birthday party.

Q And that's in December of 1969?

A Right.

Q And can you tell us what Mr. Rubin Waldman told you as an emissary of Ivan Ezrine when he paid you a visit on or about -- I assume it is late February or beginning March of 1970?

A Rubin Waldman --

MR. WILSON: Why we fix the exact date? I think the witness can do that.

THE COURT: Do you remember the exact date?

THE WITNESS: Rubin Waldman came to my office on a Monday morning, March 2, 1970, at approximately 9:00 o'clock. The first question I asked him what was he doing in my office, why isn't he out soliciting business --

Q For whom?

A For himself. The answer was --

Q In the Garment Center, you mean?

A Wherever he goes. Bronx, Manhattan, Queens.

THE COURT: Let's get on with the case.

A I asked him what is he doing in my office, and he told me that Mr. Ivan Ezrine called him late at home Sunday night to make sure to get to my office to try to persuade me not to go the SEC and to be there all day long.

Q Well, what did Mr. Rubin Waldman say to you on that day as an ambassador for Ivan Ezrine?

THE COURT: He just told you what he said.

MR. SEIDMAN: I would like --

THE COURT: You want to know what he said next?

MR. SEIDMAN: Yes, your Honor.

THE COURT: All right.

A During the course of the day, Mr. Waldman told me that he happened to be in Mr. Ezrine's office and he heard that they are working on some big deals, to try to place Manor Nursing, that I should cooperate with him and with Ivan and with Ira Feinberg to be patient and not to go to the SEC.

Q Do you know of your own independent knowledge whether or not Rubin Waldman knows Ira Feinberg?

A He does.

Q Tell us how you know that of your own independent knowledge?

A I think he met Mr. Feinberg on two occasions that I know of.

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group selling or selected dealer selling, that any agreements were solely and exclusively within the control of Benjamin Werner & Company as to how it would want to make the deals?

A It's not so.

Q Did Ivan Ezrine transact any business through any of his entities or individually or accounts at Benjamin Werner & Company, after February 20, 1970?

THE COURT: Did he transact any business through those accounts?

MR. SEIDMAN: Yes.

A Are you talking about the broker-dealers?

Q No, he said did Ezrine transact any business through his accounts at your company after February 20th.

THE WITNESS: Which accounts are you talking about?

THE COURT: Ezrine's.

Q Corporate accounts, his wife's accounts.

A Oh, yes.

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Q Could you tell us whether or not you testified truthfully before the Securities and Exchange Commission when you appeared there some time in the early part of 1971?

A I did not.

Q Did you lie?

A I did.

Q Had you been indicted for that crime?

A Yes, I have.

Q For lying to the SEC?

A No, I'm indicted on Manor Nursing. It is in reference to Manor Nursing.

THE COURT: Mr. Seidman was asking you whether you had been indicted for lying before the SEC.

THE WITNESS: No.

THE COURT: What is the lie or was there more than one?

THE WITNESS: It was in reference to closing the deal on Manor Nursing.

THE COURT: What did you say that was not true?

THE WITNESS: That based upon the letter that I had in my possession that I thought the deal was consummated in proper order, which it wasn't.

THE COURT: And you knew it wasn't?

courtroom in this building?

A The same lie that was made with the SEC was made with Judge Motley.

Q Are you telling us, Mr. Werner, that you lied because you relied on the representations made to you by Ivan Ezrine?

A That is correct.

THE COURT: I don't understand that, Mr. Werner. My definition of a lie is when somebody makes a false statement knowing that it is false.

I understand that at the time that Mr. Ezrine doped out this letter that you all signed you thought it was --

THE WITNESS: A legal technicality.

THE COURT: -- legal, exactly. By the time that you came before Judge Motley you felt it was not; is that it?

THE WITNESS: I still felt --

THE COURT: Why do you say you lied? Why do you say you lied before Judge Motley if you still thought it was true?

THE WITNESS: It was unfortunate. I am not apologizing, but when the checks cleared --

THE COURT: When you appeared before Judge

CROSS-EXAMINATION

BY MR. SCHWELLER:

Q Any paper or any writing or any agreement or any check, including the check for $75,000 issued to Denesco Corporation that was signed by you and in your capacity as Benjamin Werner & Company, was given to you or prepared for you at the direction and instruction of Ivan Ezrine; is that correct?

A That's correct.

Q Delmonico had absolutely nothing to do with it?

A Nothing whatsoever.

MR. SCHWELLER: Thank you, your Honor.

THE COURT: That was two questions.

MR. SCHWELLER: I am sorry. I added one more.

MR. SEIDMAN: Part of the same thought, your Honor.

REDIRECT EXAMINATION

BY MR. WILSON:

Q Mr. Werner, I show you what you saw before and what was marked as Government Exhibit 90 for identification.

THE COURT: Will you remind us what that is, Mr. Wilson?

MR. WILSON: Those are three checks.

Q What are those?

MR. WILSON: They are not in evidence, your Honor.

A Those are three checks issued to me by Ira Feinberg.

Q At the closing?

A At the closing.

Q And deposited in your escrow account at the closing?

A That's correct.

Q I show you Government Exhibit 91 for identification.

Can you tell us what those two checks are?

A Those two checks are issued by Ivan Ezrine on the account of Great Oil Basin Securities Company.

Q And did you deposit those into your account?

A That is correct.

MR. WILSON: The Government offers 90 and 91 in evidence.

MR. SEIDMAN: No objection.

MR. SCHWELLER: No objection.

THE COURT: All right, they are received.

[Government Exhibit Numbers 90 and 91, respectively, were received in evidence.]

Q Mr. Werner, I show you Government Exhibits 60-A,

61-A and 62-A for identification.

Can you tell us what those three documents are?

A These are documents sent out to the clients on purchasing Manor Nursing shares and the certificate numbers.

Q Were these letters sent by you alone with the certificates to the people named on them?

A That is correct.

MR. WILSON: The Government offers 60-A, 61-A and 62-A in evidence.

MR. SEIDMAN: No objection.

MR. SCHWELLER: No objection.

THE COURT: All right, they are received.

[Government Exhibit Numbers 60-A, 61-A and 62-A, respectively, were received in evidence.]

Q Mr. Werner, on February 20th, you learned that over three million dollars --

MR. SEIDMAN: Objection to the form of the question, your Honor.

THE COURT: Overruled.

By now these facts are part of the record.

Q You learned that over three million dollars in checks that had been given to you for the purchase of stock had bounced, isn't that right?

A That is correct.

Q And as a result of that fact, you stopped payment on all of the checks which you had issued to Manor Nursing Centers and to the selling stockholders, is that right?

A That is correct.

Q After February 20th, did you ever again write any checks to the selling stockholders?

A No.

Q Mr. Werner, taking February 25th as the starting date and up to March 2nd, when Mr. Wollman came to your office, during that period of time did you sell any Manor stock?

A I'd have to check the records. I don't recall.

MR. SEIDMAN: He is bound by the witness' answer, your Honor.

THE COURT: He said he doesn't recall.

Q Did anyone give you any money during that same period of time, from February 25th until Mr. Wollman came to visit you on March 2nd, did anyone give you any money that came from the sale of Manor stock that you had not sold directly yourself?

A No.

Q On March 2nd, when Mr. Wollman came to visit you, on that day did you sell any Manor stock to anyone?

A No.

THE COURT: You better do it so the jury can hear you.

A None.

Q Mr. Werner, in Government Exhibit 76, the letter from Mr. Feinberg to you, the letter states, "We acknowledge receipt of your checks in the aggregate amount of $1,104,006.89.

MR. SEIDMAN: I object to the manner in which this question is being asked.

THE COURT: After the trial I will sit down with you, Mr. Seidman, and try to make you understand what my ruling is with regard to how matters that are in evidence can be used.

What my ruling is is that you can't ask a witness what an eyewitness says. You can tell him what it says in the presence of the jury and ask him a question about it, and that is what Mr. Wilson is doing.

MR. SEIDMAN: I will attempt to do that in the future, your Honor.

THE COURT: Fine.

MR. WILSON: Thank you, your Honor.

Q This is from Mr. Feinberg to you.

"We acknowledge receipt of your checks in the aggregate amount of one million dollars and change. We are endorsing these checks to your order. You have paid us

these checks on account of the $3,132,500 due us from you as our underwriter."

Is that statement false?

A Right.

Q The letter continues.

"We are paying you this sum in connection with, (1), $304,006.89 of monies owed by us to persons who have purchased our shares from you and (2), $800,000 in connection with our purchase of short-term Government obligations."

A That is a false statement.

Q They were both false in this one letter?

A That's right.

THE COURT: What exhibit number is that, please?

MR. WILSON: 76, your Honor.

MR. SEIDMAN: Can I have it, please?

MR. WILSON: One moment.

Q Mr. Werner, I show you Government Exhibit 78 in evidence.

Can you tell the jury again what that check is?

MR. SEIDMAN: If your Honor please, I object.

THE COURT: What is it? Somebody has to tell the jury. They can't remember.

Q That was a lie?

A Right.

Q Was that a legal technicality?

A At that time it was.

MR. WILSON: No further questions.

RECROSS EXAMINATION

BY MR. SEIDMAN:

MR. SEIDMAN: May I have those exhibits, please, Mr. Wilson?

THE COURT: You understand, Mr. Seidman, that any further examination is limited to the redirect.

THE COURT: Limited to the redirect, your Honor.

Q Mr. Werner, with respect to Government's Exhibit 76 and Government's Exhibit 77 that Mr. Wilson just showed you --

THE COURT: Are those the letters?

MR. SEIDMAN: The letters.

Q Can you tell us who prepared them?

THE COURT: We know that. There wasn't any question about that on redirect. The witness has testified who prepared them. He testified when you examined him about it. Mr. Wilson didn't go into that on redirect.

MR. SEIDMAN: Well, I believe by putting the

letters in question, your Honor, he has put the --

THE COURT: He put the truth of the letters in question and this witness' knowledge of the facts.

Q Did you believe the contents of those letters were true because Mr. Ivan Ezrine told you they were?

A I did at that time.

Q And when you wrote all of these checks, did you issue these checks because you believed what Ivan Ezrine was telling you was the truth: That constitutes Government Exhibit 81, 80, 78, 79?

A Well, these were monies -- these were monies collected from various clients of brokers.

MR. WILSON: Those aren't the checks I showed him.

MR. SEIDMAN: No? That's what you handed to me.

THE WITNESS: These are the checks --

Q Which are the checks that Ivan Ezrine told you to sign or execute or prepare?

THE COURT: Mr. Seidman, It's up to you to keep track of what is going on in court.

MR. SEIDMAN: I have kept track, your Honor.

THE COURT: I carefully asked each time what exhibit number --

Q Are these two checks, which are Government's

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Exhibits 74 and 75 the two checks that Mr. Ezrine told you to issue?

A With the Court's permission, for the record's sake --

THE COURT: Yes.

A -- when these amounts were given to me, in my office --

THE COURT: What do you mean, they were given to you?

THE WITNESS: Mr. Ezrine was there and Mr. Feinberg and Mr. Feinberg had a piece of paper, a schedule, and these are the figures -- he wanted me to make out.

THE COURT: Who wanted you?

THE WITNESS: To Ezrine and Mr. Feinberg, to correspond with Manor Nursing books and on the strength of that I issued these checks, because these checks are all blank to me, how they divided it I don't know.

THE COURT: You knew you hadn't received stock in that amount?

THEWITNESS: Yes.

THE COURT: And no matter how many times Mr. Ezrine told you to do something, that wasn't a fact?

THE WITNESS: That's right.

Q What else did Mr. Ezrine tell you, if anything?

MR. WILSON: Objection.

THE COURT: We spent a whole day yesterday going over what Mr. Ezrine told him.

MR. SEIDMAN: All right.

Q Now, Mr. Werner, with respect to Government's Exhibit 90, which were issued February 20, 1970 by Ira Feinberg, can you tell us whether or not these checks were honored by the bank and the proceeds that they represented placed in your account?

A They were honored by the bank on the strength of my check.

Q But the payment wasn't stopped, is that correct?

A Well, there is a $559,000 that I issued to Mr. Feinberg that cleared, so naturally these cleared.

Q Right. But did the check go through?

A Yes.

Q Now, I show you Mr. Ezrine's checks, which Mr. Wilson referred to and just placed in evidence as Government's Exhibit No. 91, and ask you whether or not these checks cleared from the Great Oil Basin Securities Company?

A Yes, they did.

Q And the Great Oil Basin Securities Company was a company that Mr. Ezrine owned?

A Yes.

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that you didn't have any further questions.

(Witness excused.)

MR. WILSON: Your Honor, Mr. Hoskins will examine Mr. Haber. The Government calls David Haber.

THE COURT: All right.

D A V I D H A B E R, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOSKINS:

Q Mr. Haber, what is your occupation?

A I am in the transportation and taxicab business now.

Q Directing your attention to the last three months of 1969, the first few months of 1970, what was your occupation during that period of time?

A I was a financial consultant and investor.

Q Do you know Ira Feinberg?

A Yes, I do.

Q Do you see him in court today?

A I do.

Q Would you identify him for the record?

A Yes. He is the second gentleman to my right, or the third gentleman to my left, seated at the second

table.

MR. HOSKINS: Mr. Feinberg is identified, for the record.

Q How do you know Mr. Feinberg?

A I met Mr. Feinberg sometime in the latter part of '69 through my broker, who brought me to see a Mr. Ezrine.

Q Who is --

A And I met Mr. Feinberg at Mr. Ezrine's office or home or a combination of both.

Q How and when did you first meet Mr. Ezrine?

A Sometime in November, I think, of 1969, my broker asked me to meet with Mr. Ezrine.

THE COURT: Who was your broker?

THE WITNESS: Mr. Bornstein, Michael Bornstein.

Q And did you meet with him?

A Yes, I did.

Q Did you and Mr. Ezrine have a discussion?

A Yes.

Q Could you tell us what was said?

A Mr. Ezrine asked me whether I would like to invest a half a million dollars for the purchase of 50,000 shares of Manor Nursing stock which he would guarantee to re-purchase that stock -- by the way, the purchase price of that stock was $10 and he guaranteed to repurchase

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that stock at $11 plus another gratuity or another enhancement of the situation of 10,000 shares of some other type of a stock and I don't recall the name of it.

MR. SEIDMAN: Would you repeat that answer?

THE COURT: No, I don't see why he should repeat it -- you mean the reporter?

MR. SEIDMAN: Yes.

(Answer read.)

MR. SEIDMAN: That's what I wanted to hear. The last part of that, your Honor.

Q Mr. Haber, do you recall anything else that was said in that discussion?

A I said to Mr. Ezrine that if I could have this as a very safe investment I would go along with the purchase of it.

Q Did you, subsequent to this time, have occasion to see and talk to Mr. Ezrine concerning Manor Nursing?

A Yes. During that part of the year, during '69 or the early part of '70, we met three, four or five occasions, on which we discussed primarily how secure my investment would be. We discussed the collaterla, which could have been -- or he said to me, if he would put up a bankbook or perhaps a certificate of deposit or any other type of collateral that -- would that be acceptable to me, and I

said, yes, two.

THE COURT: Mr. Haber, collateral to collateralize what? His obligation --

THE WITNESS: His repurchase of the 10,000 shares at $11 a share.

Q And at these three or four or five meetings who was present besides you and Mr. Ezrine?

A Mr. Mike Bornstein was present at the first meeting. He may have been present at some of the other meetings. Mr. Feinberg was present at two or three of these meetings. I don't recall how many times.

Q Did Mr. Feinberg join in the discussion of any of these meetings?

A I don't think so.

MR. SEIDMAN: If your Honor please, I object to the form of the question.

THE COURT: Overruled.

MR. SEIDMAN: Would you read the question and answer back, that question and the answer.

THE COURT: No, that's all right. Let's go on.

A Mr. Feinberg -- I don't think entered into any great amount of discussion if he entered into any, but he was present at the discussion relating to the various types of securities that would be put up as collateral and what we were talking then, with the purchase of the 50,000

A We discussed the length of time as being six months, ten days, in order for me to possibly effect a capital gain. But a put was there from the first day until six months and ten days later, that you can put the stock to the issuing office at any time within that period of time.

Q Following that, did you purchase 60,000 shares of Manor Nursing stock?

A Yes.

Q When and how did that come about?

A Mr. Ezrine, some time in the early part of March, delivered to me at my bank -- I say "my bank" -- I mean the bank that I was depositing in, the Royal National Bank, 60,000 shares of Manor Nursing plus 60,000 puts or 6 puts at $10,000 each put.

Q Did you and Mr. Ezrine have a meeting in connection with that?

A Well, we met at the bank, yes, sure.

Q And then what happened?

A I had a certified check made out for $600,000 and went with Mr. Ezrine down to somewhere on Broadway, I think, to Mr. Werner's building. And, by the way, the certified check was made out to me. I endorsed it and gave it to Mr. Ezrine, who then endorsed it, and we went

down to Mr. Werner's building at which time he turned over the check to Mr. Werner, who then went into the bank -- there's a bank in that building, if I recall correctly, and I assume that he deposited it. I don't know what he did with it.

Q I show you what have already been received into evidence as Government Exhibit 28 and ask you if you can identify them.

A Yes.

Q What is that?

A This is a put -- these are put options or a put, as it is called, in which I described the condition in which I could put the stock to Orvis Brothers at $10 a share.

Q Were those given to you by Mr. Ezrine?

A Those are the ones given to me by Mr. Ezrine.

Q And Government Exhibit 73 in evidence: Do you recognize that?

A Yes.

Q What is that?

A A certified check made out to David Haber, signed by David Haber and certified by the bank for the sum of $600,000.

Q And is that the check that you gave Mr. Ezrine

and Mr. Werner?

A This is the check that I gave to Mr. Ezrine. Mr. Ezrine gave it to Mr. Werner.

Q Very well. By the way, let me show you once again Government Exhibit 73 and ask you if that refreshes your recollection as to the date of this meeting.

A March 4th. That would be the day, yes.

Q Did you have occasion to speak to Mr. Ezrine the next day, March 5th?

A Yes; I did.

Q What was that?

A Mr. Ezrine and I met, and he asked me at that time whether I would exercise my put, that the put that he had given to me had cost him $180,000, and if I would return the put to him he could save that $180,000, and I would get my profit of that. Instead of waiting for a capital gains, would I take a short-term gain? I said yes.

Q Did that happen in a face-to-face meeting or on the telephone?

A A face-to-face meeting, after meeting with him first -- I think it could have been at my bank again, or perhaps on the street outside of my bank. I had gone to the bank at that time, as I recall.

A Before they went to the hallway.

Q Did you go to Mr. Ezrine's home that evening?

A Yes.

Q And what happened there?

A He was not at home, so -- his wife told me that he had gone to Florida.

Q I am sorry --

A His wife told me that he had gone to Florida.

Q Did you get your 10,000 shares or $60,000?

A No, sir.

Q By the way, back to the meeting in Mr. Werner's office, at the time that Mr. Ezrine spoke to you about the 10,000 shares and $60,000, where was Mr. Feinberg?

MR. SEIDMAN: If he knows, your Honor.

A Part of the time he was in the room while I was having a discussion with Mr. Ezrine, and part of the time he walked out in the hallway, or wherever he went. I don't know. He went both in and out of the room while the discussion was taking place.

Q Mr. Haber, if you had not been offered the puts along with the shares, would you have purchased the Manor shares?

A Not unless some other sort of collateral which would have been of value to me, would I have purchased those

words that I just uttered. They have no more effect than to prove to the satisfaction to the jury and myself, and myself primarily, because I have to make a ruling thereafter, that these are indeed business records of that bank. They do not cringe the question of whether the business records of the bank, just because they are business records of the bank, are admissible in this case.

MR. SEIDMAN: If that is the guideline, your Honor, then I would stipulate that those --

THE COURT: Not just the guideline, that is the law.

MR. SEIDMAN: I appreciate that, your Honor.

THE COURT: If you are willing to stipulate that, then we have the presentation of these documents to me to be put in evidence with argument on both sides as to why they should be in evidence on the one hand, or they should not be in evidence, on the other.

MR. SEIDMAN: Clearly reserving to me the right to contest their relevancy.

THE COURT: Absolutely.

MR. SEIDMAN: Even if they are relevant, the aspect of denial of confrontation of Ezrine --

THE COURT: Youcan argue that. I wanted to say that you can argue that just as well whether there is a

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MR. SEIDMAN: I want to state for the record that the very example that Mr. Schweller is making, is right of confrontation, I am being denied that right of confrontation with respect to the Ezrine documents and the Great Oil Basin documents.

(Trial adjourned until 2:00 p.m.)

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I R A F E I N B E R G, a defendant herein, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SEIDMAN:

Q Mr. Feinberg, could you tell us where you live?

A I live in Miami Beach, Florida, but I am currently staying at a Holiday Inn, in Paramus, New Jersey.

Q And can you tell us whether or not you are married?

A I am.

Q Do you have any children?

A Yes, I do.

Q How many children do you have?

A Three.

Q Can you give us their ages?

A Three daughters, 12, 14 and 16.

Q Mr. Feinberg, can you tell us the extent of your education?

A I am short eight hours credit for a degree.

Q At college?

A Yes.

Q And will you tell us when if at all you first went into business after you finished your schooling?

A I was working while I was going to school -- to college.

Q Beginning with the initial date, as best you can recall, will you recount for us the circumstances under which you met Mr. Ezrine and any social contact you may have had with him at or about the time you met him?

A In December, 1967, at the Algiers Hotel, in Miami Beach, my daughters took care of his little boy, and we got -- as a result we got friendly with Mrs. Ezrine at the hotel, because Mr. Ezrine was in Europe, and she invited us over the house for dinner.

Q Was this in Florida?

A Pardon me?

Q Where did she invite you over to the house for dinner?

A 37 East 68th Street. She invited us while we were in Florida to come to her house in New York.

Q Did you meet Mr. Ezrine in Florida or is the first time that you met him after his wife had invited you and your wife to dinner?

A The first time I met him was when we came to their home.

Q And was that house a townhouse located at 37 East 68th Street?

A Yes.

Q And up until that point, could you tell us

about leading questions. Just ask him what happened next.

MR. SEIDMAN: Very well, your Honor.

Q Could you tell us what happened next when you returned from dinner?

A Mr. and Mrs. Ezrine and my wife and I returned to the house. We went up to the first floor. That's one up above the ground. And we took an elevator up to I think the fifth floor, where they had a -- like a big family room. We sat down and we had a couple of drinks and then Mr. Ezrine said, Why don't you come downstairs to my office and we will leave the girls alone.

And then we went down in the elevator to his office, which was on the ground floor.

Q And could you tell us what room, if you recall, you went into?

A Well, he showed me his entire office.

Q He showed you his entire office. And could you tell us -- could you describe that office to us, if you would?

A Well, let's see. There is a -- from the street going back there is a long, like a corridor, like an aisle, and then you come into a sort of a reception area, and then off the reception area to the right was a very large -- of course, his private office, a large room, and then going

back to this reception area, if you went straight back there was a law library there.

Well, it was more than a law library, it was a law library, conference room.

Q And could you tell us what if anything you noticed on the walls of the law library or any of his other rooms?

A Well, the law library had all types of law books. The other rooms, one had -- both sides of the wall had framed stock certificates and in the -- in his office there were these miniature prospectuses -- I don't know, prospectuses or prospecti, but more than one -- plural.

Q What if anything did you say to him and did Mr. Ezrine say to you as you continued in your conversation after he took you downstairs on that date, if you recall?

A Well, he showed me, you know, pointed everything out. He said that he was probably the -- I think he used the expression at that date, he was probably the dean emeritus of syndication lawyers.

Q And what else did he say to you and what did you say to him?

A Some place either in the car or upstairs, before we went downstairs he had asked me exactly what I did and I told him I had a 64-bed nursing home that we had

opened just several months ago, in Tenafly, New Jersey, and he said he knew the area very well, because he banked in Englewood, which is one town south of Tenafly, and he wanted me to pinpoint the area, and I explained to him that we were at the foot of the East Hill and that's probably one of the most affluent sections of Bergen County.

And he asked me if I ever considered expanding my business, and I said, "Well, we were only in it several months and we were new at it."

He said, "Well, wouldn't you be interested in expanding your business?"

And I said, "Ultimately, yes."

And he said, "How did you plan to do it?"

And I had discussed with him a piece of property that we were negotiating with Mr. Al Cullere and his brothers, I think there were five of them.

And he said, "Why don't you let me help you get the money?"

Q Well, tell us in substance --

A The gist of it was, "Why don't you let me help you get the money and I can get you public and I can come up with a big plan and get youall the money you need. You don't have to worry about mortgage companies, and all

these other items."

And I do remember my comment to him, "Well, with 64 beds what do I really have,"and I will never forget his answer to me, "Well, Henry Ford started in a garage."

Q And did there come a time that you left that meeting or get-together?

A Oh, yes.

Q And could you tell us whether or not you came to any agreement concerning any possibility of your going public on any --

A No, he had just suggested it to me and I thought he was just being nice.

Q Did there then come a time when you met Mr. Ezrine again, after that first meeting?

A Yes. I believe a day or two later my wife called and thanked Mrs. Ezrine and asked if she and her husband would like to come out to New Jersey.

Q And did there come a time when Mr. and Mrs. Ezrine visited you at your home in New Jersey?

A Well, what happened was that they asked us to come into the city again and this time the cook -- they were sure the cook would be there and they would like us to partake of the hospitality of their home.

Q And did there come a time when you did go there that second time?

A Yes, probably.

Q Could you give us a time reference within approximately when you visited Mr. Ezrine's house again?

A I will guess but I can't be too far off. Ten days.

THE COURT: That is, after the first meeting or after the first get-together?

THE WITNESS: Yes, sir.

Q And that is sometime in 1968, is that correct?

A Yes, still sometime early in '68.

Q And could you tell us what if anything you said to Mr. Ezrine and what he said to you at that second get-together?

A Well, he asked me if I had thought over his suggestion about going public, and I said I had discussed it with a banker friend of mine, and I found no reason, nor did he, "If you think it is possible. I just want to let you know one more time that we are talking about a 64-bed nursing home."

Q And what if anything did you thereafter say to him and did he say to you at that next social gathering?

A What he said was, he would send me a list or memo

of what I had to supply to him in the way of information.

Q And did there come a time that you did receive such material in the mail or in whatever manner you did receive it?

A I don't remember whether he gave it to me personally at some subsequent time when we met or -- I don't believe he mailed --

THE COURT: Any way you got it.

THE WITNESS: I don't really remember.

THE COURT: You did get it?

THE WITNESS: Oh, yes, I did get it and I have it.

Q And if you recall, could you tell us what information he sought from you?

A What my plans were, development plans, land plans, what I wanted to put on the land, what area, who I would want as officers, who I would want as, I think, general counsel, how much money I had in the Tenafly Nursing Home.

Q You mean invested in it?

A Yes. Well, it was my equity in it.

Q And did there come a time that you prepared this information for him, yourself, or did you relate to any professional advice in preparing this material?

A No. What he asked me for I called, as an example, I called up Abe Beckerman, who was my friend and

attorney and asked him if he would be the general counsel and he said he would.

And I said would he be a member of the board of directors and he said he would, and I called up Mr. Bayliss who was the senior vice-president of the National Community Bank and chief mortgage officer and asked him if he would be on the board, and he said he would have to clear it with the bank first, and I called up Seymour Weiner to find out precisely what my equity was and we had a long discussion as to what equity constituted, whether it was book value or whether it was realizable value of the building.

Q And did there come a time that you furnished the information that Mr. Ezrine requested of you?

A Yes, I did.

Q And can you give us an approximate time reference at which time you gave him that information?

A Sometime in '68, maybe in the middle.

Q Had you at that point reached a decision as to whether to go public or not to go public or was the information furnished merely for preliminary discussion?

A No, I think at that time I was convinced that the thing to do would be to go public.

Q And as a result of going public, what did you

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expect to be able to do?

A Well, he had asked me what my plans were, and I was interested in the Emerson Nursing Home.

Q Can you tell us --

A I shouldn't say the Emerson Nursing Home. I was interested in the land at Emerson to build a nursing home on the land.

Q And could you tell us of your own knowledge whether or not you had this discussion with Mr. Ezrine, whether the Emerson property had been zoned for a nursing home,if you know?

A When you said zoned for it, it was rezoned by the Zoning Board of an adjustment for a nursing home. It wasn't zoned nursing home. Most towns of Bergen County don't have a nursing home zoning.

THE COURT: You mean to begin with it wasn't so zoned?

THE WITNESS: Yes, it was zoned residential.

THE COURT: There did come a time when it was zoned? I think Mr. Seidman is asking you when that occurred.

THE WITNESS: I think it was done by Mr. Cullere.

Q And was that done as a part or a condition of purchasing his land from Mr. Cullere?

A No, we bought what you call a package. We bought the plan with all the approvals and plans already done.

Q Had Mr. Cullere, if you know, previous to your purchasing or entering into a contract to purchase the Emerson property, obtained all of the appropriate rezoning or whatever technical word you seek to use for that particular piece of land which would have permitted someone to construct a nursing home on that piece of land?

A That is correct. For I think it was a 112-bed approval.

Q And at that time did you expect to purchase other land --

MR. WILSON: Objection.

THE COURT: Sustained.

Q Did there come a time when you entered into a contract with Mr. Cullere to purchase the Emerson property which had already been zoned or rezoned or obtained prior permits for a nursing home?

A Yes, we did.

Q Did there come a time that you retained an accountant for the purposes of this proposed public offering?

A Yes. Mr. Ezrine told us that we would

need -- I had an accountant, but he said we would need an accountant who was experienced in companies going public, you know, for securities information.

Q And did there come a time that Mr. Ezrine did in fact recommend an accountant?

A Yes, he did. He recommended Seymour Weiner & Co.

Q And could you tell us the approximate date that Mr. Ezrine recommended Seymour Weiner &Co. as counsel for your company?

A It must have been toward the latter part of 1968.

Q Had you known Seymour Weiner prior to that date?

A No, sir.

Q Prior to meeting Mr. Ezrine's wife in Florida, had you known Mr. Ezrine prior to that date?

A No.

THE COURT: He has testified he never met him before.

Q At or about the time that you supplied Mr. Ezrine with the material and information that he requested, could you tell us what professional, if any, prepared the material for presentation to Mr. Ezrine?

A I don't understand your question. What professional--

Q Did you use an accountant to prepare any

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materials to be submitted to Mr. Ezrine? 375a

A Well, Mr. Weiner extracted whatever he needed from your books and records for Mr. Ezrine.

Q Did there come a time that therefore you had made available to Mr. Weiner all of your books and records for his examination?

A Yes, for a long period of time, because he had to certify our books and records.

Q Of your own knowledge, do you know on what date Mr. Weiner first prepared a certified financial statement for submission to Mr. Ezrine?

A No.

Q You don't know --

A I don't honestly know.

Q But there is no doubt in your mind that he did prepare such a statement for Mr. Ezrine?

A Yes. It may be based upon the fact that we were a fiscal year company, that it would be June 30th, but I am not sure.

Q Did you and Mr. Ezrine have any discussion as to fees, if any, he was to receive for the professional services that he was to render to your company?

MR. WILSON: Objection.

THE COURT: Overruled.

A Mr. Ezrine first submitted an underwriting agreement to me, and there were names on there that I didn't know, the initial underwriting agreement.

Q What did he say to you and what did you say to him with respect to that?

A Well, he called me to come to his office one day. He said he has an underwriting agreement prepared.

Q Will you tell us, if you can, the approximate date that this is happening?

A We must still be late in '68.

Q Go ahead. And did you go to his office?

A Yes.

Q Will you tell us what he said to you and what you said to him and what if anything you did do there?

A Well, he gave me an agreement to read. It may have been two or three pages. And I remember asking him what blue sky provisions meant and if they put a ceiling on the costs, because he had something in there to the effect that we would pay for all the blue sky provisions, and I said, "You better tell me what that means in money." And he said he would agree to a limit on that.

As far as fee provisions were concerned, he said that he was interested in getting the underwriting provisions done and he would let me know what his fee was as

soon as he knew how much work he had to do. He really wasn't sure how much work he had to do.

Q And did you leave it at that at that time?

A Temporarily, yes.

Q Will you tell us what if anything happened thereafter with respect to the proposed going public of Manor Nursing Centres after that meeting and your having signed the underwriting?

A No, I didn't sign it.

THE COURT: He didn't say he signed it.

A I didn't sign this agreement, but there were people on there whom I didn't know. There was West Coast --

Q Well, what did you do, Mr. Feinberg?

A Well, I didn't want to sign that agreement, because I didn't know who these people were, and he said these were people who would be selling the stock, and that he wanted them to be stockholders in the company in exchange for them doing the work, and I said, "Well, I would like to -- who are these people, I would like to know who they are."

And he said, "Okay, I will introduce you to them."

Then, two or three weeks later, he said he didn't think that I had enough meat whereby having just the Tenafly and the Emerson, I should get a few more

pieces of property so there would be more meat in the underwriting.

Q Would you explain to the jury and the Judge what you mean by getting a few more --

A Well, what you normally attempted to do is to get an option on the property, subject to a variance, if necessary, subject to the necessary local approvals, in addition to the variance.

Q So therefore, he wanted you to acquire more property to build nursing homes, is that correct?

A Right.

Q And did you seek to purchase such property?

A I took an option on a piece of land in Riveredge.

THE COURT: Where is that?

THE WITNESS: Riveredge. These are all in New Jersey, sir. I took an option on a piece of land in Riveredge, in Washington Township, in Wayne, and in Paramus.

Q And did you inform Mr. Ezrine that you had acquired other sites, as you have just testified?

A Okay. Then, yes, he asked me to give him a detailed paragraph, as detailed as I could, as to what the size of the parcel was, you know, where it was located, what I intended to put on it, the number of beds, what I anticipated the cost would be, how much the cost of the

land was, how much did I reasonably think I would finance, would it be conventional financing or FHA financing. He wanted a paragraph on each one.

Q And did you speak to anyone else concerning the development of what dollars you might need to construct nursing homes on those particular sites for purposes of the public offering?

A Well, I was aware of the cost of the land, naturally, because the options set it forth, and I discussed with Mr. Bayliss -- well, the National Community Bank was probably the largest nursing home mortgage company in the area. They did more with nursing homes. And I asked him what he thought, and we kind of roughed out what we could put on the site, the number of beds on the average. And we came up with some figures.

Q And did you then speak to anyone else concerning what dollars you would need from the public offering in addition to the dollars you might receive from the bank by way of a loan for construction?

A That was a conversation that quite honestly changed from week to week. There just never was a firm figure until --

THE COURT: Conversation with whom? Mr. Bayliss?

THE WITNESS: No, Mr. Ezrine.

A It was changing from week to week what our costs would be, how much stock we would have to sell the public. Let's not figure the 64 A for a 90 per cent loan, let's figure it for an 80 per cent loan.

So every time we sat down the numbers changed.

THE COURT: Am I to understand that what you mean, Mr. Feinberg, is that from week to week you discussed with Mr. Ezrine how much money he wanted to raise by this offering and every week the figure changed?

THE WITNESS: It did.

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Q Can you tell us why that figure changed?

A Well, we initially planned, as an example, on the Wayne property -- it was a piece of property that sloped gently towards the resevoir in the rear, so we wanted to take advantage of the terraine and build into the side of the cliff. Originally we put in 180 beds and then we said, no, 120 beds would be better, so he changed the number of beds, the type of construction. I didn't discuss this with Mr. Ezrine.

Q Who did you discuss that with?

A I went over this by myself with a Mr. Arthur Schimmel.

Q Who is Mr. Schimmel?

A He is a gentleman who we brought into our -- originally brought into our construction company.

Q You were, in essence, discussing construction costs with him?

A That is right.

THE COURT: With Mr. Schimmel?

THE WITNESS: Yes. There was a Zeruba, I think, Zeruba-Sposa. We discussed with them what it would cost.

Q Did there come a time when you arrived at an approximate figure of what you would hope to raise by

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going public as a means of assisting you to build these nursing homes on sites that you just testified to?

A Yes, we did.

THE COURT: "We" being who?

THE WITNESS: Myself, Mr. Weiner, and Mr. Ezrine came up with -- we came up with a table: The name of the property, how much we thought it would cost, how much the land cost, how much we thought we could finance, what the furniture, fixtures and equipment would cost, and therefore how many dollars had to be raised, which would be the end, the last figure in the column.

Q Did you do that with each and every property site?

A Yes, we had to.

Q Did there come a time that you worked on these numbers with Mr. Weiner who was then your accountant?

A Yes, we did. That is, I did work with him.

Q Did there then come a time that you met Mr. Ezrine and indicated to him --

MR. WILSON: Objection, it is leading.

THE COURT: I want to hear what the rest of the question is.

Q Did there then come a time that you had a meeting, after you developed all of these costs, with Mr.

Ezrine? 383a

THE COURT: He didn't say he developed the costs with Mr. Ezrine.

Q Did there come a time that you had a meeting with Mr. Ezrine after you had developed these costs?

A Yes, we did.

Q Can you tell us who was present at that meeting, if you remember?

A Well, there were several meetings and in the meetings it was either I and Mr. Ezrine or Mr Ezrine, Mr. Weiner and myself.

Q Can you tell us the approximate time during which these meetings had taken place ?

A We are at 1969 now.

THE COURT: Early?

THE WITNESS: Yes.

The reason I know that is that we had already gotten a proof that Mr. Ezrine referred to as the boiler-plate paragraphs that are in every underwriting, so he had already run off a proof in January. So we were past January now.

Q And January, of what year?

A January 1969.

Q Can you tell us in that meeting if you can recall,

then specifically in order or if you can't recall specifically, what in essence he said to Mr. Ezrine and what he said to you with respect to Manor Nursing Centres, Inc. going public in the early part of 1969?

A I don't understand.

Q What did Mr. Ezrine say to you after you had delivered all of this information to him?

A Then he wanted to know -- let's see. He wanted a paragraph on each one of us, I think on the directors, and then he wanted to know who our Director of Nursing was. He wanted a paragraph on her.

Q How did you furnish Mr. Ezrine with this information?

A I asked Mr. Beckerman to write up about himself, and Mr. Bayliss to write about himself, and Mrs. Marnane to write about herself.

Q How did that material get to Mr. Ezrine?

A I gave it to him.

Q What, if any papers did you draft for these purposes up until then, the purpose of going public?

A A little paragraph about myself, the table I worked on with Mr. Weiner as to the costs of the land, and the construction and then we lost the option of Washington Township, so we had to revise the table.

Q Ultimately all of this information was furnished to Mr. Ezrine; is that correct?

A Yes.

Q Did Mr. Ezrine tell you what he would do with this information?

A Use it for going public.

Q Did there come a time that he showed you any printing or writing that he indicated were papers for going public?

A Yes. I told you this printed proof of the pages that would eventually be in the prospectus.

Q Do you recall what the earliest date of your having been shown such a proof was?

A It seems to me that it was early in January of 1969, but I have all those in a file. I can have them in here tomorrow morning. I have every proof.

Q And in early 1969, at that time, can you tell us what Mr. Ezrine said to you concerning who the underwriter would be, if he did say such a thing to you?

A Yes, Benjamin Werner.

Q When did he first mention the name Benjamin Werner to you?

A Well, I will have to go back. He first had it on that agreement with these other people's names.

THE COURT: When did he first tell you that Werner would be the underwriter for Manor Nursing?

THE WITNESS: That was --

THE COURT: When was that?

THE WITNESS: In 1968.

Q Can you tell us when was the first time you ever met Mr. Werner, if you recall?

A No. I met Mr. Werner twice. Before the closing date --

Q Of February 20, 1970?

A That is right, I only met him twice.

Q Could you tell us when those dates were, if you recall?

A I don't know the dates, but one was at the Hotel, I think it is the Pierre on 60th Street and Fifth Avenue, where Mr. Ezrine's son's bar Mitzvah reception was held.

The other one was in Mr. Ezrine's house, when his sister-in-law's first born --

Q When they had the child's bris?

A Okay, yes.

Q And that was in December, 1969 or the early part of 1970; is that correct?

A I believe so.

Q Could you tell us what, if any, negotiations you had with Mr. Werner prior to February 20, 1970 concerning your public offering of Manor Nursing Centres, Inc.?

A I had none with him directly. Mr. Ezrine had the agreement already executed. It just needed my signature.

Q Could you tell us what, if anything, Mr. Ezrine said to you about Benjamin Werner concerning Mr Ezrine's relationship to Benjamin Werner Company?

MR. WILSON: Objection. The whole conversation is that Benjamin Werner is the reason I'm rising. I ask it just be limited, not led.

B2 THE COURT: I will sustain that objection. If you want to ask what Mr. Ezrine told him about Mr. Werner, I will allow that.

When he first spoke to you about Mr. Werner, what did he tell you about him?

THE WITNESS: He told me Mr. Werner was a wholesaler. I didn't know what a wholesaler was.

He said, "Not only is he a wholesaler, he is a wholesaler's wholesaler. He takes underwritings and gives it out to wholesalers who then have selling groups."

Q When, if you remember, was the first time that Mr. Ezrine said that to you?

A The first time he told me about Benjamin Werner.

Q Did there come a time when you in fact signed an underwriting agreement with the company known as Benjamin Werner & Company on behalf of Manor Nursing Centres?

A Yes.

Q Could you tell us where that took place?

A I signed it in Ivan Ezrine's office.

Q Was Mr. Werner present?

A No, I had only met him twice before the closing.

THE COURT: When did you sign the underwriting agreement with him?

THE WITNESS: 1969, I believe.

THE COURT: What part of the year?

THE WITNESS: Probably it was the early -- early in the year.

THE COURT: I guess you gentlemen know what the date was.

THE WITNESS: I have a copy of it.

THE COURT: Never mind. Let's go ahead with the questioning.

Q Early in 1969?

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A Yes.

Q Could you tell us, what, if any, prior business dealings Mr. Ezrine indicated he had had with Benjamin Werner during the course of these conversations with you?

MR. WILSON: Objection.

A The only thing he said about his relationship with him was that he was his friend and he had done a lot of work with him and for him.

Q When Mr. Ezrine asked you to sign the underwriting agreement, did you sign it then and there or did you show it to anyone else?

MR. WILSON: This is leading. What did he do is the proper question.

THECOURT: Sustained.

Q When Mr. Ezrine first showed you the underwriting agreement, what did you do with it?

A I read it and there were portions of it that I didn't understand and he said that is what he was there for, and he explained them to me.

Q How many attorneys did Manor Nursing Centre employ or retain the professional services of during the period that it was going public beginning in the latter part of 1968, going into 1969?

A David Beckerman was our attorney and Ivan Ezrine

called himself Special Counsel. 390a

Q Did there come a time when you retained the services of Ivan Ezrine?

THE COURT: "You" being Manor Nursing?

MR. SEIDMAN: Yes.

THE COURT: Will you use the name?

MR. SEIDMAN: Yes.

A He was already our attorney as special counsel.

THE COURT: When did Manor Nursing retain him as special counsel?

THE WITNESS: I guess it would be late in 1968.

Q And could you tell us for what purposes you retained the services of Ivan Ezrine as special counsel?

A Well, David Beckerman knew very little about SEC law and Ivan Ezrine was supposed to be an expert, so we retained him to write the prospectus, to do all the work. He retained an underwriter for us and assured us there was no problem in selling the underwriting. He assured --

THE COURT: The question was, for what purposes you retained him.

THE WITNESS: To do all of these things.

Q Did there come a time that Ivan Ezrine requested

of you payment for the services that he was to render as special SEC counsel?

A Our agreement was that he was to be paid when the underwriting was closed.

Q Therefore, up to and including the date of the closing, which is February 20, 1970, Ivan Ezrine --

THE COURT: Ask a question. Don't make a statement.

MR. SEIDMAN: Yes.

Q Can you tell us what, if any monies --

THE COURT: Or other compensation.

Q -- or other compensation Ivan Ezrine had been paid by Manor Nursing Centres, Inc. for his professional services up to and including February 20, 1970 by Manor Nursing Centres, Inc.?

A I don't believe we paid him anything up to and including February 19, but on February 20 we gave him a check for, I think it was, $50,000-some odd.

THE COURT: What was the agreement as to Manor Nursing Centres and Ezrine as to what he would be paid when the closing was complete?

THE WITNESS: He took it on a contingency basis. At some time in the latter part of 1969 we settled on a $50,000 fee, but he was only to get paid that if we

went public. 392a

Q Can you tell us what if any other consideration or compensation Mr. Ezrine asked for as part of his agreement to represent you either on his behalf or anyone else's?

THE COUPT: Are you asking what he asked for or what was agreed to?

MR. SEIDMAN: I am seeking to develop the conversation.

MR. WILSON: Ask him what was the conversation about that subject and you'll get the answer

THE COURT: YOu can ask, if you wish, was there any other conversation about further compensation to Mr. Ezrine.

MR. SEIDMAN: Very well. Besides the $50,000, either for himself or for anyone that he indicated was to receive something.

THE COURT: Let's take him first.

Was there any conversation with regard to compensation for Mr. Ezrine beyond that $50,000?

THE WITNESS: Him, personally? Ivan Ezrine.

THE COURT: Yes.

Q Yes.

A No.

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Q Can you tell us what, if anything, Mr. Ezrine did ask for in the way of compensation prior to February 20, 1970?

A When he set up the company, Manor Nursing Centres, he had what he called original stockholders or originating stockholders. He said that he wanted two of his clients, one in Boston and one in New York to be in that because they were going to be part and parcel of Benjamin Werner's selling group.

Q Did he give you the name of those two entities or persons that he represented to be his clients at the time that he mentioned that to you?

A I believe he did, yes. Atlantic Services was one of them and the other one was Glendale, Inc.

Q And at that time he told you that those were clients of his; is that correct?

A That is right.

Q Could you tell us what understanding you and Mr. Ezrine came to concerning Glendale, Inc. and Atlantic Securities, did you say?

A No, Atlantic Services something. He said that they were in Boston.

THE COURT: Never mind where they were.

Did Manor Nursing and you come to an agreement?

394a

THE WITNESS: Yes, we did.

THE COURT: What was that agreement?

THE WITNESS: He was to be an originating stockholder.

THE COURT: He was?

THE WITNESS: No, these two companies. I'm sorry.

THE COURT: I'm confused here. You owned the company, you or your associates owned the company when you met Mr. Ezrine. What was he proposing? Had a new company been considered?

THE WITNESS: There was no company. Manor Nursing Centres. He started it.

mprf 5 pm 1 Feinberg-direct

THE COURT: What do you mean by saying he started it? You mean he had a lawyer organize it?

THE WITNESS: He organized it, yes.

THE COURT: What was the nature of your business entity before that?

THE WITNESS: The Manor at Tenafly and we had agreed that we would call --

THE COURT: The Manor Nursing Centres, Inc. was a corporation you formed after you had met Mr. Ezrine?

THE WITNESS: That is correct.

THE COURT: And he was the lawyer who arranged for the mechanical formation of it?

THE WITNESS: He formed the corporation.

THE COURT: And he asked you as part of this transaction to see to it that Glendale, Incorporated and Atlantic Services received some of the stock of Manor Nursing as original stockholders?

THE WITNESS: Yes.

THE COURT: And you agreed to it?

THE COURT: Yes.

THE COURT: All right, go ahead.

Q And at that time did Mr. Ezrine indicate to you who the principals of Glendale, Inc. and Atlantic Services were?

A He didn't know who Atlantic Services were but sometime later --

THE COURT: No, Mr. Seidman asked you, at that time.

THE WITNESS: No.

A No.

Q Now, did there come a time that you placed assets or property that either you or companies that you owned into the entity or business structure called Manor Nursing Centres, Inc.?

A Yes.

Q And could you tell us what assets you, Ira Feinberg, or Ira Feinberg, the corporate entities that he owned placed assets into the new company known as Manor Nursing Centres, Inc.?

A Did there come a time?

Q Yes.

A Yes.

THE COURT: Who put what into it?

THE WITNESS: I put in --

THE COURT: You owned it personally?

THE WITNESS: I owned it personally.

THE COURT: What?

THE WITNESS: The Manor at Tenafly, or I and my wife owned it. In New Jersey I think she owns it if

I own it.

THE COURT: I don't know. I was asking you.

Q In any event, did you place --

THE COURT: Let him tell us what he did.

Q What did you put into Manor?

A The lands, the buildings, the furniture, the furnishings, the equipment, the money in the bank.

THE COURT: To put it simply, are you telling us that the company you owned transferred all of its assets to Manor Nursing Homes, Inc.?

THE WITNESS: That is correct.

Q And did there come a time that you placed other assets into the company known as Manor Nursing Centres, Inc.?

A I had a deposit on the land at Emerson -- I don't remember whether it was $10,000 or $20,000 which was put in there, and I transferred all the options in there.

Q Did there come a time that Mr. Ezrine placed any assets that he might have owned into the company known as Manor Nursing Centres, Inc.?

A No.

Q Other than yourself, Mr. Feinberg, did any other individual put any assets intc the company known as Manor Nursing Centres, Inc.?

A No.

Q Now, could you tell us what the approximate value on your books and records of the property that you did place in Manor Nursing Centres, Inc. was at the time that you in fact put it into the new corporate structure?

A What the book value was or what its value was?

Q What its value was.

A Well, it cost nine hundred and some odd thousand dollars to build and I had a 359 or $357,000 mortgage balance.

THE COURT: And how much depreciation had there been?

In other words, did you have this property valued at the time that you transferred it?

THE WITNESS: No. We didn't have it appraised if that is what you mean.

THE COURT: I don't mean appraised, but normally a value is set on the property at the time it is transferred to the corporation so that the stock can be issued in relation to it. I'm not saying that's necessary but it is normal. Did that happen?

THE WITNESS: No, it didn't happen.

THE COURT: All right. Will you explain what you believed the property was worth and how you reached that

figure?

THE WITNESS: Well, the building was worth at least as much as it cost to build.

Q And what was that?

A Nine hundred and some odd thousand dollars. And then of course the nursing home building as a nursing home is worth much more than just the building by itself, because there is a staffing problem.

In other words, it cost about $100,000 before you are able to staff the building and have your patients in.

Q Therefore, would you give us what the approximate value of the assets that you transferred into the company were at the time that you transferred them into Manor Nursing Centres, Inc.?

A It was calculated to be about $625,000.

THE COURT: That's what I asked: Who calculated it?

THE WITNESS: Mr. Ezrine, Mr. Weiner and myself.

THE COURT: All right. That's what I wondered.

THE WITNESS: I'm sorry, I misunderstood.

MR. WILSON: What was that?

THE COURT: He said he was sorry, he misunderstood my question.

Q Was there any value attributed to good will in

that figure?

A No.

Q Was there any value attributed to the fact that there was a going business at the location of the particular asset?

A No. We took a 359 mortgage and a $625,000 I think it was the value, that was about 969 or $960,000. I think the building cost $462,000 to build. That is what the number came from the stock that I was to be selling as a selling stockholder. That was the number.

Q And other than what you contributed to this venture, Manor Nursing Centre, Inc., did any other individual contribut any physical asset?

THE COURT: He already said no.

THE WITNESS: Physical assets, no, but some people put in five cents for each share.

Q At the time that you were operating the nursing centre in 1969 when you were going public, Mr. Feinberg, did you have any other active business enterprises going for you?

A Yes. I had built an apartment house.

THE COURT: Did you maintain an interest in it at that time?

THE WITNESS: Yes.

401a

A I built a 78-family high rise apartment house in Hackensack, New Jersey.

Q And what other assets did you have, if you recall?

A I don't know what you mean by what other assets? You mean did I have money in the bank or stock?

Q Yes.

A Yes.

Q And could you tell us what assets you had?

A I had some money in the bank. I had some stock.

Q Will you tell us what stock you had?

A I wouldn't remember now.

Q Offhand?

A No.

Q At or about that time did you have an interest or own any stock position in a bank in New Jersey?

A Yes.

Q So therefore did you place your last asset into the venture known as Manor Nursing Centres, Inc., Mr. Feinberg?

A No, sir.

Q In 1969 did you from time to time meet with Mr. Ezrine or speak to him by telephone?

A Yes.

Q And can you give us the approximate date upon which he first indicated to you that the work that he was doing as special SEC counsel had reached that stage that you were close to going public?

A It would be kind of late in the year of 1969. He received what -- as best as I can explain it, he received what he referred to as comment letters that had to be answered, and I think that when we got into about October of 1969 he said we were almost there.

Q Now, up to that date in October of 1969, Mr. Feinberg, can you tell us what if any paper you had delivered to the Securities and Exchange Commission personally?

THE COURT: Bu mail or otherwise. You don't mean he actually delivered them in Washington?

Q As a direct communication between you, Ira Feinberg, and the Securities and Exchange Commission, whereby you didn't use the services of Ivan Ezrine?

A I never went to the SEC. I never brought anything there. I never was there.

Q From time to time, did Mr. Ezrine request either information or papers from you up to that October 1969 date?

A Well, continuously. He said he needed papers

for exhibits, and he needed copies of our mortgages, copies of land agreements, certain books and records from the company.

Q What else did he request of you at that time?

A It was all -- it was all papers and information that he said was necessary to keep putting into the prospectus.

Q And did he tell you what if anything he needed for purposes of sending to the SEC or what he needed for purposes of his own records in his office or did he not distinguish between that?

A I don't think that that was ever, you know, brought out in just those words. He needed all these papers in order to complete the prospectus.

Q And as of October 1969, you had still not met Mr. Benjamin Werner, is that right?

A Well, I can't really say that honestly because I don't really remember when Ezrine's son's bar mitzvah was. I think it was late in '69, but I can't tell you whether it was October or November.

Q Up to and including October 1969, can you tell us whether or not you had met Harold Greenberg or Leonard Glass?

A Up to October of 1969?

404a

Q Yes.

A No, sir.

Q Up to October of 1969, had you ever met a man by the name of Jack Naiman?

A No, sir.

Q Up to October of 1969, had you ever met a man by the name of Joseph Delmonico?

A No, sir.

Q Up to October of 1969, had you ever met a man by the name of Chris Netalkos?

A No, sir.

Q Up to October of 1969 had you ever heard of the name of David Jamieson?

A No. Not at all.

Q What if any instructions did Mr. Ezrine give you concerning what you might of might not do with respect to the sale of Manor Nursing Centres stock to the public in October of 1969, if such is the beginning date?

THE COURT: Will you rephrase that question?

MR. SEIDMAN: Yes.

Q Did there come a time when Mr. Ezrine, as your SEC counsel, gave you any instructions as to what you, Ira Feinberg --

THE COURT: Personally?

MR. SEIDMAN: Yes.

THE COURT: All right. I just want to be sure.

Q -- might do with respect to the selling of Manor Nursing Centre, Inc. stock?

A Are you asking me what the first time he gave me any instruction was?

Q Yes.

A In January of 1970.

Q All right, fine.

THE COURT: January of 1970?

THE WITNESS: Yes.

Q In January of 1970 can you tell us what Mr. Ezrine said to you, if anything, concerning --

A Can I go back about two weeks, three weeks?

Q Yes, you may.

A All right, in the middle of December, my wife, my daughters and myself went to Florida, and when we left there had already been a telegram from the SEC that the registration was effective, and Mr. Ezrine said he had the entire issue sold, he told that to myself, to Mr. Weiner and Mr. Beckerman. The entire issue was sold.

THE COURT: Did he tell Weiner and Beckerman in your presence?

THE WITNESS: Beckerman was in my presence.

THE COURT: All right. Let's keep it to yourself and Beckerman. You don't know when he told it to Mr. Weiner.

THE WITNESS: Well, Mr. Weiner told it to me.

THE COURT: That doesn't mean you know Mr. Ezrine told him.

All right. He told you and Mr. Beckerman that he had sold the entire issue.

THE WITNESS: That the entire issue was sold and "Go to Florida and enjoy yourself."

That was it. When I came back from Florida, the 2nd of January, the 3rd of January -- I am not sure -- the 4th, he said he was having some trouble and was there any way that I could help him sell some stock?

THE COURT: I think the question that Mr. Seidman asked you is whether he gave you any instructions about what you could do with the stock or what you could do with regard to selling the stock.

MR. SEIDMAN: That is my question.

THE WITNESS: Well, he said to go out and try to sell some of the stock. I said, "Well, where do you suggest that I sell the stock? I am not in that business."

He said, "You go to your vendors and your friends, whoever you know. You go to some of your friends who want

to make a buck and maybe they can sell some of the stock."

And he said, "Go wherever you have an account, a personal account, and talk to your broker, representative.

Q And this was said to you by Mr. Ezrine in the early part of January of 1970; is that right?

A Real early in the month.

THE COURT: Mr. Seidman, I am afraid I will have to terminate the day. I have to attend a meeting at this time. We will continue tomorrow morning at 10:00 o'clock, ladies and gentlemen.

I would like to see the attorneys in the robing room, briefly.

(Jury left courtroom.)

(In the robing room.)

THE COURT: I just wanted to ask you, Mr. Seidman, although I think it is not the easiest thing in the world to answer, how long do you think your direct examination will be?

MR. SEIDMAN: At least through the morning tomorrow, your Honor. I may be wrong --

THE COURT: No, but we are still going, I take it?

MR. WILSON: Yes, I think we have suddenly gotten a new ballgame going again.

THE COURT: Now, I am going to ask counsel

to do the following: Tomorrow is Tuesday. 408a

(Discussion off the record.)

THE COURT: All requests to charge are to be filed with my chambers or me personally no later than 10:00 o'clock Monday morning, this coming Monday. That gives you a week from now. I will need them by then, certainly.

All right, thank you very much, gentlemen.

(Adjourned to November 26, 1974-10:00 a.m.)

MR. SEIDMAN: If your Honor please, I assume that I will be served with a copy of counsel's requests to charge.

THE COURT: Absolutely, and you will serve him with yours.

(Adjourned to November 26, 1974 - 10:00 a.m.)

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UNITED STATES OF AMERICA,

- v s - 73 Cr. 464

IRA FEINBERG and JOSEPH DELMONICO.

November 26, 1974

[10:15 a.m.]

- - -

[Trial resumed; in the robing room.]

THE COURT: All right, Mr. Feinberg.

DEFENDANT FEINBERG: I had asked Mrs. Panzer to speak to you.

THE COURT: I called you all in because Mr. Feinberg has something to say to me.

DEFENDANT FEINBERG: I take medication about every hour. I would rather not take in front of the jury. It is difficult to sit in the chair. I have a steel brace on.

THE COURT: Yes, I know you do.

DEFENDANT FEINBERG: It is rather difficult.

THE COURT: Would you like to have a recess?

DEFENDANT FEINBERG: About once an hour for just five minutes.

THE COURT: All right.

DEFENDANT FEINBERG: It is difficult to sit in

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the chair. I can't sit in a soft one and I can't sit in a hard one, but the hard one is the better of the two.

MR. WILSON: I, too, have an application. It deals with Mr. Feinberg. I don't know if the Court wishes him to be here.

MR. SEIDMAN: He has a right to be here.

THE COURT: Yes.

MR. WILSON: The cause of my concern, which the Government has had from the very start of this case, is the issue of restitution or issue of how Mr. Feinberg has lost a lot of money not be brought before this jury in an effort to bring sympathy for him.

Yesterday a red flag went up, at least in my mind, when questions were asked by Mr. Seidman dealing with "How much were you worth beyond the investment you made in the Manor Nursing Centers"?

The Court has already dealt with this matter as to Mr. Seidman and I would appreciate it if the Court would direct Mr. Feinberg not at any time, unless the Court has cleared it ahead of time, to state to the jury how he has lost all his money or that he has returned all his money back to the trustee or anything of that nature.

That is the Government's application.

THE COURT: I think, Mr. Feinberg, that your

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answers to Mr. Seidman's questions so far have been quite responsive. It does not seem to me that they have wandered.

It is a fact that whatever hard luck you may have suffered as a result of this fiasco -- I'm using that without judging the present proceedings -- is irrelevant to the charges before the jury and the jury would not have a right to consider the question of how you suffered or what gain you made either, as far as that is concerned.

The question as I see it, anyway, is whether you knew what you were doing, because I believe that on the whole the facts are not seriously disputed. Maybe some details will be. Of course, I understand that.

Therefore, I want you to guide yourself accordingly, but primarily the responsibility, of course, is on Mr. Seidman. I'm not doing anything except to remind you that that is my view of the case.

MR. SEIDMAN: I believe that the motive, intent and knowledge of my client with respect to the facts of this case play a very important role in the assertion --

THE COURT: A key role, of course.

MR. SEIDMAN: I was being moderate in my understatement.

THE COURT: But this has nothing to do with

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what happened.

MR. SEIDMAN: However, your Honor, it goes to his motive and his intent. If anything, I believe --

THE COURT: What goes to his motive and intent?

MR. SEIDMAN: As to what his surrounding financial condition was at the time.

THE COURT: Perhaps so. That was allowed yesterday.

MR. SEIDMAN: Further, whether or not --

THE COURT: I think it is peripheral, to be frank, but I choose to favor the defendant rather than to be narrow about it.

MR. SEIDMAN: If your Honor please, there has been an awful lot of peripheral material that has gone into this case.

THE COURT: I don't think there is any need for us to fuss about this. Let's get on with the case.

MR. SEIDMAN: I may be further considering one further application. I don't know whether I will pursue this. However, I think I should give the Court warning. It is conceivable that I may ask the Court to call Mr. Ezrine as a witness in this case.

THE COURT: I don't know what you mean by "the Court" to call him as a witness.

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MR. SEIDMAN: In certain instances I believe the Court has within its power to call a witness.

THE COURT: I don't intend to do that.

MR. SEIDMAN: In the event that the Court doesn't intend to do that, then it is conceivable that I would intend to call Mr. Ezrine as a witness in this case. Of course, there is the possibility that Mr. Ezrine on such an occasion would assert his Fifth Amendment privilege against self-incrimination and in view of the fact --

THE COURT: It is a question whether it is assertable at this stage.

MR. SEIDMAN: I believe it is in view of the fact that he has not been sentenced as yet.

THE COURT: You may be right.

MR. SEIDMAN: I believe the statute directs the United States Attorney, if he did call Mr. Ezrine as a witness in this case and should the witness somehow assert his privilege against self-incrimination, to request of the Court that the Court entertain a motion to grant that witness immunity.

THE COURT: That goes for approval to the Attorney General, and so on.

MR. SEIDMAN: Assuming all that were to take place, whether he did or did not is material to what I'm

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suggesting, assuming that all those preconditions had take place. I am going to ask the Court that in view of the fact that the United States Attorney would in that instance, should he determine or should he have determined to have called Mr. Ezrine as a witness, assuming he obtained the appropriate approval from Washington, to request the Court the granting of immunity.

I respectfully submit that in view of the fact that Mr. Feinberg is on trial here that I will request the Court possibly that on application of the defendant, Mr. Feinberg, that the Court grant immunity.

THE COURT: I have no authority to do it.

MR. SEIDMAN: Just bear with me.

THE COURT: I have no authority to do it.

MR. SEIDMAN: I'm not suggesting that you do. Will you just bear with me?

If I were to subpoena Mr. Ezrine and should he assert --

THE COURT: You have made the record. You have asked me to do it and I tell you there isn't any authority.

1.2am MR. SEIDMAN: I submit to you, then, sir, that such is a denial of equal protection under the law with respect to my client, in view of the fact that the prosecutor would have that option and does have that option

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in this case, whereas the Court has just informed me that the defendant could not similarly present his defense in this case.

THE COURT: Mr. Saidman, say it quicker.

MR. SEIDMAN: I think I have said what I wished to say.

THE COURT: You have some good points, in a sense, but you take forever to say them.

MR. SEIDMAN: I apologize for the longevity of my statements.

DEFENDANT FEINBERG: May I say something?

MR. SEIDMAN: Speak to me.

[Pause.]

MR. SEIDMAN: We will deal with restitution at a later date. I assure the Court that I will not bring that out without previously conferring with the Court.

MR. WILSON: The witness is not to bring it up on his own without instruction --

MR. SEIDMAN: I object to your lecturing me or the defendant in the presence of the Court in that type of tone.

THE COURT: I agree.

All right, Mr. Schweller, do you wish to say something?

2 am mprf Feinberg-direct

(In open court.)

THE COURT: All right, Mr. Seidman.

MR. SEIDMAN: Might I have the last question?

THE COURT: Yes.

MR. WILSON: There was an objection as to form.

THE COURT: If he wants it to remind him -- well, I think you know what you were talking about.

Q After you found out those facts about Mr. Ezrine and Mr. Werner what did you then do, Mr. Feinberg, in either November or December of 1970?

A Well, in early December, Mr. Weiner -- Seymour Weiner and I had a discussion as a result of the attempted verification of the Netelkos bank account, and we decided that -- I told him, he said, "Look, let's find another attorney and let's go sit and talk to somebody."

Q And at that time, could you tell us what you did after that conversation with Mr. Seymour Weiner with respect to another attorney?

A Seymour Weiner recommended an attorney by the name of Lawson Bernstein.

Q And did you go to Mr. Lawson Bernstein, an attorney?

A Yes, we did.

Q And as a result of -- where did you go to?

His office?

A Ohk to his office, yes. It was at --

Q And did you engage in certain conversations with Mr. Bernstein?

A Yes. I explained everything to him.

Q Tell us what you said to Mr. Bernstein and what you told him?

MR.WILSON: Objection.

THE COURT: Sustained.

MR. SEIDMAN: If your Honor please, I don't believe that is hearsay as to what Mr. Feinberg said.

THE COURT: All right. Go ahead.

A I told him exactly, from the day I met Mr. Ezrine right up to that morning. I reviewed everything for him, and gave him all the information, all the pertinent facts.

Q Can you tell us how many meetings you had with Mr. Lawson Bernstein --

MR. WILSON: Objection.

THE COURT: Overruled.

Q Tell us how many meetings you had with Mr. Lawson Bernstein during December or November of 1970, Mr. Feinberg?

A Three or four.

mprf 3 Feinberg-direct

Q And as a result of that meeting, can you tell us what if anything --

THE COURT: That meeting or those meetings?

Q Those meetings. Pardon me.

As a result of those meetings, can you tell me what if anything was prepared with your assistance?

A Well, we first retained him as an attorney --

THE COURT: The question was, did you prepare anything as a result of those meetings?

THE WITNESS: Yes. A filing for the Securities and Exchange Commission, that 10-K.

Q I now show you Feinberg Exhibit N and ask you whether or not this is the material that was prepared as a result of the meetings with Mr. Bernstein and Mr. Weiner.

A I assume it is, yes.

Q And I ask you particularly to examine the writings beginning at page F-7 -- pardon me -- beginning on page f-7 of Feinberg Exhibit N and ask you whether or not, in words or substance, this was the information that you furnished to Mr. Bernstein for preparation of Government's Exhibit --

THE COURT: F-7 through what page?

MR. SEIDMAN: Particularly F-7 through F-11, your Honor, at the top.

THE COURT: Do you understand the question?

THE WITNESS: Yes, I do, sir.

A This was as a result of meetings held in January in the main, with Mr. Weiner and Mr. Bernstein in order to make sure that we had every fact correct and that everything that he presented was put in here that we were aware of.

Q Now, at the time that you gave this information to Mr. Bernstein for the preparation of Feinberg's Exhibit N were you aware of the fact that this information was going to be furnished to the Securities and Exchange Commission?

A Certainly.

Q In October of 1969, Mr. Feinberg, did you know a man by the name of Jack Naiman?

A No, I didn't.

Q In October of 1969, did you know a man by the name of Joseph Delmonico?

A No, I didn't.

THE COURT: You asked these very questions yesterday afternoon.

MR. SEIDMAN: Yes. It will just take me a moment, your Honor. I just wanted to hopefully flow logically with respect to the substance of my examination.

THE COURT: All right.

Q Can you tell us who introduced you to Mr. Naiman?

A Mr. Ezrine. That's not really a fair statement. We met Mr. Ezrine up there, and somehow everybody was introduced to everybody else.

THE COURT: Excuse me, Mr. Feinberg. You met Mr. Ezrine up where?

THE WITNESS: At Deneso's office.

Q Who told you to go to the Deneso office?

A Mr. Ezrine called Mr. Weiner and I at Mr. Weiner's office and said that we were in East Orange, to drive over to Park Avenue and -- I think it is East Orange, also, or South Orange -- I am not sure -- but it is right in that vicinity.

Q And can you give us an approximate date when you received that phone call from Mr. Ezrine?

A It would be sometime in January of 1970. It seems like the latter part of January would be closer.

Q When is the first time you learned that Mr. Jack Naiman had a criminal record?

A I knew when he was arrested in Mr. Ezrine's office, if that is what you mean by a criminal record, but other than that I didn't know until I came into this

court. 422a

Q And can you give us the approximate date, if you would, when Mr. Naiman was arrested in Mr. Ezrine's office, if you recall?

THE COURT: I believe Mr. Naiman testified it was in April of 1970.

Does that sound right to you?

THE WITNESS: It was about that time, sir.

Q Were you aware of the fact that Jack Naiman had a criminal record -- if I may characterize it, if the Court would permit me --

MR. WILSON: Your Honor --

THE COURT: Don't characterize it. Just ask were you aware of the criminal record --

Q Were you aware, prior to April of 1970, and particularly in January and February of 1970 and in March of 1970 that Jack Naiman had previously been convicted for approximately -- of approximately six crimes?

A I didn't know.

Q When was the first time that you met Joseph Delmonico?

A The same time -- whatever day I met Mr. Naiman I met Mr. Delmonico. It was an evening, not a day. It was in the evening.

Q And can you tell us who introduced you to Christos Netelkos and when?

A Monroe Kessler introduced me to Mr. Netelkos in late January, the latter part of January of 1970.

Q Could you tell us how Monroe Kessler came about to introduce you to Mr. Netelkos?

A Starting with the chain of events?

Q Yes, will you please?

A Mr. Ezrine, early in January, said he needed some help to sell the underwriting, and would I talk to the company that I did my stock business with. They were Eastman Dillon, in Wayne, New Jersey, and I spoke to the representative, whose name was John Pensik and he said he would set up a meeting with somebody whose name was Guza, Geza, and there was a meeting set up, I guess about the middle of January with Mr. Geza, Mr. Kessler and some other gentleman, all from Carlton Cambridge and I at J. B. Marios Restaurant on Route 4, in Paramus, New Jersey.

As a result of this, there was a general discussion about what the company had and what the company planned to do, the size of our underwriting, the -- you know, the details. How much the stock was for, et cetera.

Q Was Mr. Netelkos at that meeting?

A No, sir. Mr. Kessler then said that he --

THE COURT: Who was Mr. Kessler? What was his status or connection?

THE WITNESS: I think he was the head of the Carlton Cambridge office.

THE COURT: All right.

A He said he thought that the company would be interested, because they were an over-the-counter house. I think he called them a third market maker or something like that.

And he said he would arrange an appointment for me to speak to the fellow who was in charge of all of their back room operations, and I guess maybe ten days, two weeks later, there was a meeting arranged with Mr. Netelkos.

I met Mr. Kessler across the street from the Bergen County Courthouse administration building where Mr. Netelkos' office was. He went upstairs and introduced me to Mr. Netelkos, and he just stayed a few minutes and he left, and that is how I met Mr. Netelkos.

Q Could you approximate the time that you met Mr. Netelkos, Mr. Feinberg?

A I'm sorry. What?

Q Might you be able to approximate the time--

THE COURT: When did you meet him?

THE WITNESS: Close to the end of January.

Q Now, can you tell us who told you that the Manor Nursing Centres, Inc. public offering was effective and available to purchase by the public, in 1969?

A The securities and Exchange Commission sent us a telegram.

THE COURT: Who told you? Did you receive the telegram personally?

THE WITNESS: Yes.

Q And will you tell us what if any instructions Mr. Ezrine gave to you with respect to what you were permitted to do with respect to the sale of Manor Nursing Centres, Inc. stock after it became effective on December 8, 1969?

MR. WILSON: I have to object to the use of "instructions," and the leading nature of the question.

MR. SEIDMAN: I will take that out.

MR. WILSON: "Was there a conversation" is the way it should always be framed, and that's my standing objection.

THE COURT: I will use that form.

Q What if any conversation did you have with Mr. Ezrine concerning what you, Ira Feinberg, were permitted to do concerning the sale of Manor Nursing Centres, Inc. stock

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after it became effective on December 8, 1969?

THE COURT: Is your question intended to ask about conversations relating to what Mr. Feinberg could do in the sale of his own stock in Manor Nursing or with regard to the sale of stock other than that which he owned, or both?

MR. SEIDMAN: I would state that it is both, your Honor.

THE COURT: Well, you know what you are asking. Will you answer the question, please?

A When we got the telegram, on December 8th, he told me --

Q Who is he? Will you please use names?

A I'm sorry. Ivan Ezrine told me within a day or two thereafter not to concern myself -- I was going to Florida the following week, not to worry, the issue was all sold out, to forget it. So he didn't tell me what to do or what not to do.

Q Then what happened? What did Mr. Ezrine say to you, if anything?

A After I got --

THE COURT: We went through this yesterday. You testified yesterday that when you came back he told you he was having problems and he asked you to help him.

THE WITNESS: That is correct.

THE COURT: Will you go on from there. 427a

Q And did he ask you as the issuer --

MR. WILSON: No, what did he say.

THE COURT: What did he ask of you?

Q What did he ask you to do as the issuer?

A He asked me to try to help to sell the part of the issue that he was having trouble with.

Q And up until that time, had you met Benjamin Werner, other than at the two social occasions in December?

A No, I had not, and I didn't say they were in December. There were two occasions.

THE COURT: Well, whenever they were.

Q Whenever they were. Pardon me.

And did you, in fact, attempt to have people purchase the stock --

THE COURT: Mr. Seidman, you should listen to Mr. Feinberg's answers. He has already told us about a meeting he had with people from Carlton Cambridge and everything else.

Will you go to something new?

MR. SEIDMAN: Well, it may have sounded --

THE COURT: Maybe there are other efforts that you want to inquire about. If there were, inquire about them.

MR. SEIDMAN: Thank you. 428a

Q And did you, Mr. Feinberg, attempt to interest others in the purchase of Manor Nursing Centre, Inc. stock during January of 1970?

THE COURT: Others than whom? Is this the ones he has already told us about.

MR. SEIDMAN: Other than the ones he has already told us about.

A Yes, I did.

Q Now, can you tell the jury and the Judge what you did with respect to seeking to interest others in purchasing Manor Nursing Centres stock in January of 1970 on into February?

A I explained to him that I had expected momentarily to have a meeting with this Carlton Cambridge group and what else was I supposed to do.

Q And what if anything did Mr. Ezrine say to you?

A He asked me to speak to all of my vendors. He says, "You must have neighbors, you must have friends. You must know some people who would be interested in backing you."

Q And what did you do with respect to your vendors and your friends and your acquaintances, with respect to attempting to interest them in Manor --

A Well, from the point of friends and acquanitances I could say I ran the gamut from the rabbi on one end to the priest on the other end and sold them all stock. And from the point of the vendors, just about evervone of the vendors bought stock and some of the employees in the nursing home bought stock.

Q And when these people purchased stock, do you mean that they purchased it from you individually or did they sign a subscription --

MR. SEIDMAN: May I have that exhibit, please?

MR. WILSON: I will get it for you.

THE COURT: You can ask the question anyway.

A I can tell you one transaction which would just about govern them all.

MR. SEIDMAN: Would you be kind enough to mark this.

THE COURT: Isn't it marked?

MR. SEIDMAN: It is in evidence.

THE COURT: So what do you want to do?

MR. SEIDMAN: I want to ask him if this is the --

THE COURT: I thought you were asking the clerk or the reporter to do something.

MR. SEIDMAN: Might my question be read?

(Question read.)

MR. SEIDMAN: -- whereby such was mailed to Benjamin Werner, if you know?

A What I did, I asked the people if they would buy the stock. They told me they would buy it and how many shares they would buy, or conversely, how many dollars they would put in. Which divided by 10 was the number of shares.

I made up a list and sent it to Mr. Werner and he sent them all the papers that were necessary and that was it.

Q In other words, you indicated to Mr. Werner that these people had indicated an interest and a desire to purchase the stock, is that right, and would he mail them the appropriate papers?

MR. WILSON: Objection.

THE COURT: Sustained. If ever there was a leading question, that's it. But anyway, the witness has told us what he did.

Q Can you tell us, if you know, what papers, if any, did Mr. Werner mail to these people whom you had sought to interest in the purchase of Manor Nursing Centre stock?

THE COURT: And if you do, tell us how you know.

THE WITNESS: Well, I saw some of my neighbors who had gotten it. It was that paper that you were holding, plus --

Q I show you Government's Exhibit No. 69 and ask you whether it was a paper similar to what I now show you.

A Yes. These were the forms.

Q Thank you.

A Plus a return envelope, unstamped.

THE COURT: Did that stick in your mind, that it was unstamped?

THE WITNESS: Yes, because somebody made a comment to me about it.

Q Now, Mr. Feinberg, these people -- if you know, will you tell us whether or not these people were purchasing stock from you or were they purchasing it from Benjamin Werner, who was the underwriter?

A I had the stock to sell. He was the underwriter.

MR. SEIDMAN: Mr. Wilson, might I have Government's Exhibits 1 through 100, whatever it is?

THE WITNESS: Can I ask my lawyer a question?

MR. SEIDMAN: Do you need a break?

THE WITNESS: No, that wasn't it.

MR.SEIDMAN: If your Honor please, I have to do something with these exhibits, and not to waste the time of

the Court, if we might have a few minutes recess.

THE COURT: How long do you want? We have only been sitting for half an hour. If these things could be arranged ahead of time, it would be a great courtesy to the jury and myself.

MR. SEIDMAN: I agree, your Honor.

THE WITNESS: Could I ask --

THE COURT: I would rather you wait --

THE WITNESS: I wanted to amend an answer.

THE COURT: I am bringing to your attention that I am talking to Mr. Feinberg.

MR. SEIDMAN: I have no objection, your Honor.

THE COURT: Did you want to correct or amend an answer?

THE WITNESS: Yes. One of my answers I don't think was fair to Benjamin Werner. I think I said I called them all into Benjamin Werner. Some of them I put on a list that I left at Mr. Ezrine's office. I didn't give a complete answer.

Q However, you left it at Mr. Ezrine's office for Mr. Werner, is that it?

A Yes, because he had a messenger daily, who picked up everything.

Q Mr. Feinberg, when you met Mr. Neteikos, could

you tell us what Mr. Netelkos said to you and what you said to him in January of 1970?

A At our initial meeting?

Q Yes, at your initial meeting.

A He asked me questions about the company, about myself. He wanted me to make sure that I sent him back a copy of the prospectus to read. He wanted to know how much stock that the company wanted him to take and buy. Well, everything pertinent to the underwriting and the company, and he said he then wanted to check into it and he would get back to me in a few days, and he did in two or three days.

Q Did Mr. Netelkos tell you --

MR.WILSON: Objection, leading.

THE COURT: Sustained.

Q What did Mr. Netelkos tell you? What did Mr. Netelkos say to you at that meeting, if anything?

A He said it sounded interesting, but he wanted to see it, he wanted to see the prospectus, and he would then discuss it in the next day -- or the next day with some of the managers of the different branches of Carlton Cambridge and any other people that he knew that might be interested in buying it and he said then he would get back to me in a few days,and he did.

Q And this meeting takes place when, Mr. Feinberg?

A Late in January was the first meeting.

Q Did the name of any other stock brokerage firm come up during the course of your meeting with Mr. Netelkos where you discussed the company?

A Not at the first meeting. I doubt -- I don't believe so, but at the second meeting there was a discussion about --

MR. WILSON: Objection. The answer is not responsive.

MR. SEIDMAN: All right. I will develop it, your Honor.

THE COURT: All right. I am willing to allow reference to the second meeting, if that is the subject you wish to explore.

Q Did there come a time when you met with Mr. Netelkos again?

A Yes, sir. I guess about three days later.

Q And can you tell us what he said to you and what you said to him at that meeting?

A He said he had spoken to some of the managers of the Carlton Cambridge branches, and he had also spoken to -- he mentioned a name that I don't remember. He had already spoken to somebody else, and he said, of course, he was in the midst of negotiations to become the senior partner of

Orvis Brothers.

Q Would you tell us what if anything Mr. Netelkos indicated was his position at Carlton Cambridge at the time that you met with him, either at the first or at the second meeting?

A He said he was in charge of all of their back room, back office facilities.

Q And did Mr. Netelkos state anything else to you or did you state anything else to him at the second meeting concerning --

MR. WILSON: Objection.

THE COURT: Sustained.

Q -- at the second meeting?

A He said he had read the prospectus:

"Who is Benjamin Werner?" When can he meet Benjamin Werner?

How would -- how would -- well, I misunderstood that part. He asked how payment would be made, and I at that meeting was under the impression he was talking about how payment would be made to Carlton Cambridge.

I didn't realize he was talking about himself.

MR. WILSON: Can we have everything that was said. That answer is not responsive to the question.

MR. SEIDMAN: You can read it back to the jury, or read my question back.

436a

THE COURT: No, that isn't the point. The objection is overruled. If you want to ask further questions, you can. Go ahead, Mr. Seidman.

Q Will you tell us on what date or at what place and with hom either Cristos Netelkos or Carlton Cambridge agreed to take a position in the Manor Nursing Centres' underwriting?

A Mr. Netelkos and I met one more time prior to February 8th -- and I know February 8th, because my wife and I went away. We met one more time prior to February 8th, in which he said he wanted to get paid $2 a share, and I called Mr. Ezrine from his office.

THE COURT: From Netelkos' office?

THE WITNESS: Yes, I am sorry.

A I called Mr. Ezrine from Chris Netelkos' office and told him that Mr. Netelkos was sitting there and said that they would buy the -- I think it was -- I think it was 50,000 shares. They would buy the 50,000 shares but that they wanted $2 a share, and while I was on the phone, Mr. Netelkos said, "Wait, just a minute. Tell him to hold on. I want $2 a share. Carlton Cambridge has to get paid what the underwriter pays."

So I told Mr. Ezrine over the phone, "Ivan, he just corrected me and explained it to me," and Mr. Ezrine

did say, "To hell with him. Forget it. You can't pay that kind of money."

So I said to Mr. Netelkos, "I guess that is the end of that."

Q Will you tell us what if anything happened thereafter with Chris Netelkos?

A He called me that night and said in the prospectus it says I am getting a lot of money.

THE COURT: "I'm getting" --

THE WITNESS: I, Ira Feinberg.

A I am quoting him now.

He said, "You don't really need all the money, so I will tell you what I will do. You lend me $200,000 and justpay Carlton Cambridge what they are supposed to be paid."

I called Ezrine home that night and relayed the message to him. His answer was very simple:

"If you want to lend him $250,000, you lend him $250,000. That is your affair. You do what you want."

Q And did Mr. Netelkos tell you why he needed the $250,000?

A Yes, he did, which turned out to be partially correct. He said that --

Q No, don't tell us your conclusions.

438a

A I'm sorry.

Q What did he tell you, Mr. Feinberg?

A He said that he had put in three-quarters of a million dollars into Orvis Brothers and he needed another $250,000 to close the deal and the pressure was on him.

Q And --

A And if I could lend him the $250,000 he would see that the Carlton Cambridge Company would buy the stock at the regular price that they were allowed by the underwriter.

Q And at that point, did he discuss what if any your position would be?

MR. WILSON: Objection. Why can't the question be the way I was forced to ask it throughout the direct examination?

THE COURT: Don't put it that way, Mr. Wilson.

MR.WILSON: The proper way.

THE COURT: If you want to object to it as a leading question, don't make a speech. The objection is sustained.

Q With respect to the $250,000 that Mr. Netelkos proposed that you lend to him, Mr. Feinberg, that was to be a loan --

THE COURT: Don't tell him.

439a

Q Whom was that to be a loan from?

A He asked me to lend him $250,000, me, meaning myself, Ira Feinberg.

Q You mean Ira Feinberg individually?

A That is correct.

Q Did he tell you-- can you tell us what else he told you about Orvis Brothers and his position in that company?

A No. Really, all he said was that he was going to become the senior partner of Orvis Brothers, and I knew Orvis Brothers because I had traded some securities in Paramus in Orvis Brothers' office.

Q And can you tell us whether or not you agreed to lend Christ Netelkos $250,000?

A Well, after I spoke to Mr. Ezrine that night, hung the phone up, and I called up Fred Bavliss at home, and I told him that I was in this particular position, and how could I work out the $250,000 loan so that it would come from the bank, so that I would really have the pressures of the bank behind it to make sure that I got my money back rather than myself behind it.

So he said they would handle the transaction by me giving the bank a certificate of deposit for $250,000 as security, and then they would act in the form

of accommodating me. And as a -- shall I continue?

THE COURT: Yes.

A And, as a result, Mr. Netelkos never knew that the loan came theoretically from me and not from the bank. He thought that I got it for him from the bank.

Q Now, at all times --

MR. SEIDMAN: Strike that.

Q Of your own personal knowledge, can you tell us what payments, if any, Christos Netelkos made to the bank with respect to that loan?

A He made the interest for over a year and paid down $40,000 on it.

Q And when you say "Paid down" would you explain to the jury what that means?

A Well, he borrowed $250,000 and he paid $40,000 plus all the interest to the bank, which left a balance of $210,000.

Q Prior to February 20, 1970, Mr. Feinberg, will you tell us, had you heard of a company called the Upto Corporation?

THE COURT: If you are going to start a new line of questioning, I think this would be a good time for a recess.

(Recess.)

Q Now, would you tell us who or what Mr. Netelkos indicated would be purchasing the stock of Manor Nursing Center, Inc. for purposes of the underwriting?

MR. WILSON: Objection.

THE COURT: Overruled. There is no prejudice in that.

MR. WILSON: I don't know where, when, how.

THE COURT: We will find out, Mr. Wilson. Mr. Seidman was doing the same thing. Let people develop their questions.

A He never specifically told me who was buying it. It was just a discussion that Carlton Cambridge was going to subscribe to the 50,000 shares.

Q After that last meeting -- which takes place when, Mr. Feinberg?

A When you say the last meeting --

Q That last one that we are talking about, not the last one that you meet him at.

THE COURT: The last one he testified about?

MR. SEIDMAN: Yes.

A It was the third meeting and it was before the 8th of February, because I know my wife and I left on February 8th.

Q Could you tell us where you and your wife went,

Mr. Feinberg?

A We went to the West Coast. We went to Las Vegas and to San Francisco, to be more exact.

THE COURT: All right.

Q How long were you away, Mr. Feinberg, if you recall?

A Four or five days.

Q When you returned, could you tell us whether or not you spoke to Mr. Ezrine or did he speak to you or, if you did, what you said and what he said?

A I had so many conversations with him, I couldn't tell you what we said.

Q When you got back from Nevada and San Francisco, can you tell us whether or not you spoke to Mr. Ezrine?

A Yes.

Q What did Mr. Ezrine state to you, if you recall, whether you recall it specifically or in substance?

A Well, some place in one of the conversations when I got back he said that he had not had the deal with Carlton Cambridge formalized and would I get a hold of -- would I get a hold of -- he called him the Greek God.

Q Pardon me?

A He referred to him as the Greek God. He said, "Would you get a hold of the Greek God"?

Q Do you know of your own personal knowledge whether or not Mr. Netelkos had been in touch with Mr. Ezrine?

A I do not.

Q What did you do, then, after that telephone conversation with Mr. Ezrine?

A I called Mr. Netelkos and informed him that I was told by Mr. Ezrine that they had not formalized the arrangements that he said would be --

Q Please don't use "he".

A That Mr. Netelkos told me were going to be formalized and that was the basis that I had made the arrangements for the loan.

Q What, if anything else, did Mr. Ezrine say to you?

THE COURT: He was talking to Mr. Netelkos.

MR. SEIDMAN: Yes, I meant Mr. Netelkos.

Q What was his response?

A He said he believed that there had been a contact with the underwriter and that there was an agreement being prepared by their attorney and he mentioned his name, but I don't remember the lawyer's name.

Q Does the name Mr. Caspar mean anything to you?

A Yes, I think that is the fellow.

Q When you say his attorney, do you mean Mr. Caspar, believing him to have been the attorney for Carlton Cambridge?

A He said that was the man who was going to prepare the agreement.

Q Up until that conversation had you heard of the name Upton Corporation or International Transfer Company?

A No, sir.

Q Would you tell us when was the first day or time that you either heard of the company called Upton Corp. or International Transfer Corporation?

A I believe the first time I ever heard those names was at the closing when I saw the checks passed across the table.

Q At the closing, you mean on February 20, 1970?

A That is correct.

Q Up until that time, can you tell us who you believed Chris Netelkos was representing in the conversations that he had with you?

A He said he was running the back office of Carlton Cambridge and that he was -- the only other thing he said, other than that, was that he was buying his way into Orvis Brothers to be the senior partner.

Q After your initial meeting with Mr. Naiman and

Mr. Delmonico and Mr. Ezrine and Mr. Weiner sometime in January of 1970, could you tell us when was the next time you saw Joseph Delmonico?

A First of all, in your question you left out two other people who were there.

Q You can correct me.

THE COURT: He doesn't have to name everybody who was there.

THE WITNESS: Okay.

Q Who else was there?

A Mr. Camarrato and a short, grey-haired attorney, David Hilowitz or something.

Q Hilowitz?

A Yes.

Q After that meeting, could you tell us when was the next time you saw Joseph Delmonico?

A Ten days later.

Q And when was the next time you saw Joseph Naiman?

THE COURT: Who?

A Same time.

THE COURT: Jack Naiman?

THE WITNESS: Jack, Jake, Joseph. I don't know what his name is.

Q Can you tell us where that meeting took place?

A Seven hundred and something Park Avenue in East or South Orange.

Q Could you tell us what was discussed at that meeting, what you said and what these other people said?

MR. SCHWELLER: Specifically, your Honor, who?

MR. SEIDMAN: Absolutely, Mr. Schweller.

Q Well, I could tell you what I said with both of them. With Mr. Delmonico, we just talked about construction and I had told him that I built a theater and I built other things. We just chit-chatted about construction.

With Mr. Naiman we talked about mortgaging and we went back to where we left off the first time and continued on with our discussion about mortgages.

THE COURT: For what?

THE WITNESS: For property that was in the company's prospectus for their construction.

Q What did Mr. Naiman say about mortgages to you at that meeting?

A You are leaving out the first part. I haven't got a way to answer the second part.

Q Tell us what happened at that meeting.

A The first meeting we discussed -- when Mr. Weiner and I went up there we discussed mortgaging and Mr. Naiman

insisted upon an exclusive right for the mortgaging of the properties, of the construction of the building on the fee, the fee meaning the land.

And I said it was impossible for me to give him an exclusive right because that is short of construction, that is committing suicide, because "If I give you an exclusive right, no matter what you deliver I have to take it."

He wanted to know if he could have the right of refusal. I said, "This puts me in a position of dealing in bad faith with everyone else."

I said, "In addition to the fact that I better tell you that one of the members of our Board of Directors' name is Frederick Bayliss. He is the senior vice president of National Community Bank and one of the leading mortgage officers in the State."

In fact, he was the president of the Mortgage Bankers Association, and I said, "So, I just couldn't make that kind of a deal with you."

And Seymour Weiner said to me, "Come on, this is not for us and let's go," and we left Meeting One.

3.2 He then called and said he would like to talk to us one more time about the mortgaging. I discussed it with him and he wanted to know if there was some way that

I could think of that he could get a shot at the mortgages on these buildings. I said to him, "First of all, the building that we are going to construct in Emerson, New Jersey, we have an FHA commitment on it and there is no way we could fund it through you because you have to be a recognized Federal Housing Administration lender in order to fund against a commitment for insurance of advance.

Q Real estate was your business; is that right?

A That is right, yes.

Q Go ahead. Would you develop that conversation further?

A I said that I just didn't know -- he would just have to understand that if somebody offered me an 8% mortgage -- we are going back a few years -- if somebody offered me an 8% mortgage with a ten-year term and a ten-year payout and he could do better than that, I would be glad to talk to him, but I couldn't commit myself in any way. I just didn't know a way, I said, because I had to be free. In a mortgage market you have to be free.

Q Will you tell us what he said to you after, if anything, and what you said to him?

A He was going to think about it. He was going to discuss it with Mr. Ezrine and I couldn't understand what Mr. Ezrine was going to discuss about mortgages, but that

is what he said.

Q Did you see Jack Naiman prior to or on February 20, 1970?

A I didn't see him prior to February 2 and I did not see him on February 2.

Q Do you know of your own personal knowledge whether or not Mr. Naiman spoke to Mr. Ezrine?

THE COURT: You can only know that if you were present.

THE WITNESS: I wasn't told by either one nor was I there, if they did.

Q Did Ezrine tell you he was in contact with Mr. Naiman during the period of that last meeting you referred to and up to and including February 20, 1970?

A Sometime before February 20, and I can narrow the gap to sometime between the 13th and the 20th or the 12th and the 20th -- no, the 13th and the 19th or the 12th and the 19th, Ivan Ezrine told me that in spite of my stupidity about mortgages he still was able to make a deal for them to buy a million seven of the company's stock.

THE COURT: "Them" being who?

THE WITNESS: Deneso Corporation.

Q Do you recall the date of February 20, 1970?

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A I shall never forget.

Q Would you tell us, if you would, whether or not Benjamin Werner was present?

A On February 20?

Q Yes.

A Certainly. I'm assuming you are talking about at the bank.

Q At the closing.

A Yes.

Q And can you tell us whether or not a gentleman by the name of Harold Greenberg was present?

A There was somebody there whose name was either Glass or Greenberg representing the underwriter, but I cannot tell you which one.

Q When you say representing the underwriter, did you understand it to mean that he was the attorney for Benjamin Werner at the closing?

A Yes, there was a large circular table and everybody in order introduced themselves.

Q And might you tell us who was seated at that large circular table on February 20, 1970?

A You are not talking about in order, are you?

Q Not in order, but the different people who were seated there.

A I was there, Seymour Weiner was there. Benjamin Werner was there, and this attorney from Glass or Greenberg, Mr. Glass or Mr. Greenberg, Ivan Ezrine, Charles Gamarikian, Chris Netelkos, Mr. Dunham, who was the transfer agent for the National Community Bank, Fred Bayliss. That was all. Mr. Delmonico came, but later.

Q If you know, can you tell us with whom Benjamin Werner came to that closing on February 20, 1970?

A I don't know.

Q Did he come to that closing with you, Mr. Feinberg?

A No, he did not.

Q If you know, can you tell us with whom Ivan Ezrine came to that closing?

A Because of the physical layout of the building, I wouldn't know who came with whom.

Q I appreciate that, but do you know --

THE COURT: He says he wouldn't know.

MR. SEIDMAN: I appreciate that. I am simplifying this, I think, and if I'm not, I apologize to the Court.

Q Did Ivan Ezrine come to that closing with you?

A No.

Q Do you know who either Harold Greenberg or Leonard Glass came to that meeting with?

THE COURT: No, he said he couldn't know who

there by the structure of the building.

Can't we all assume he doesn't know who came with whom? Isn't that correct, Mr. Feinberg?

THE WITNESS: Yes.

THE COURT: And not ask question after question on the score. If you want to ask him whether they came with him, that is another matter.

Q Did any of those individuals come with you, Mr. Feinberg?

A No, none of them.

Q Had you prior to that date ever met the individual who was either Harold Greenberg or Leonard Glass.

A No.

Q Can you tell us in what capacity Ivan Ezrine was at the February 20, 1970 closing?

A At that time I thought he was in the capacity as our attorney.

THE COURT: What do you mean at that time you thought he was?

THE WITNESS: He was supposed to have been.

THE COURT: I don't understand the import of your answer. Was he or was he not the attorney for Manor Nursing at that time?

THE WITNESS: Maybe I'm just being upset about it.

THE COURT: You mean you weren't satisfied with his services but he was your attorney?

THE WITNESS: Yes.

Q Can you tell us what, if any, papers you individually had prepared or caused to be typed prior to the closing on February 20, 1970?

THE COURT: You mean papers to be used in the closing?

MR. SEIDMAN: Yes, if any.

A You mean something at the closing?

Q Yes.

A Would that include the prospectus?

Q No, for that particular closing date. The prospectus, I believe, exists already.

A Nothing.

Q When Mr. Ezrine came to that closing did you notice whether or not he had a briefcase?

A Can I explain where we were in the building, so you will understand?

Q Yes, sure.

A You come off an elevator and there is a long corridor.

THE COURT: You don't have to get so esoteric. I take it you are trying to bring out whether Mr. Ezrine

did furnish some papers there. Just ask him that.

Q Did Mr. Ezrine furnish any papers at the closing?

A Yes, he had papers with him.

Q Had you prepared any of those papers?

THE COURT: He said he had not prepared any papers.

A No, sir.

Q Can you tell us when the closing commenced timewise, when it began timewise?

THE COURT: If you recall.

A It was supposed to start about one o'clock and I think only Fred Bayliss and I were there on time, and Mr. Dunham, and everybody floated in thereafter. I would say it started about two, ten after two, five after two.

THE COURT: Around two o'clock?

THE WITNESS: Say two o'clock.

Q Can you tell us whether up to and including the 19th day of February, 1970 you had ever heard of the name of Haber?

A David Haber?

Q Yes.

A Never heard his name.

Q Prior to February 19, 1970 had you ever met a man who looked like David Haber and was David Haber but may have given you a different name?

THE COURT: Is the answer, "No"?

A No.

Q Can you tell us when you first heard the name David Haber?

A Ten days after the closing.

Q Can you tell us who mentioned the name David Haber to you?

A Ivan Ezrine.

Q Will you tell us the approximate date at which Mr. Ezrine mentioned the name David Haber, counting ten days from February 20th?

A It could have been March 1st, March 2nd. I -- I would have to weigh to pinpoint it.

Q What if anything did Mr. Ezrine tell you about David Haber, at or about the first few days in March?

MR. WILSON: Objection.

THE COURT: Sustained.

MR. SEIDMAN: If your Honor, please, I believe that any statement made by Mr. Ezrine is admissible in the framework of what I understand this case to be about, and --

THE COURT: Let's talk it over and let's see what you are trying to prove or disprove.

(In the robing room.)

THE COURT: What are you trying to prove or disprove?

MR. SEIDMAN: Well, your Honor, I am trying to prove my client's innocence.

THE COURT: Come on, Mr. Seidman --

MR. SEIDMAN: And I believe that any statement --

THE COURT: Just tell me what you are trying to prove, so I can rule.

MR. SEIDMAN: I am trying to prove that my client at no time was involved in any conspiracy with Mr. Ezrine concerning Mr. Haber at or about the time that my question relates to.

THE COURT: And what do you expect him to answer that Ezrine told him?

MR. SEIDMAN: Pardon me? That Ezrine will tell him that Mr. Haber is an acquaintance of his, and that Ezrine was entering into some deal with him.

THE COURT: I will allow it for the purpose --

MR. WILSON: I have no objection.

THE COURT: -- establishing a disclaimer --

MR. SEIDMAN: This is for the purpose --

THE COURT: I will allow it.

(In open court.)

THE COURT: I have changed my ruling, and I believe the question is proper. You can answer as to what Mr. Ezrine told you on that day.

A He told me that Mr. Haber was a wealthy investor and wanted to buy a chunk of stock. He said that checks that had been disallowed at the closing -- he then sent us an opinion letter --

THE COURT: I just asked you what he said on that day. He told you he was a wealthy investor --

A He wanted to buy 60,000 shares of stock and he wanted to meet the president of the company and the auditor for the company.

THE COURT: That is, Ezrine told you Haber wanted to meet them.

THE WITNESS: That is correct.

Q On February 20, 1970, can you tell us whether or not the Deneso Corporation appeared with any checks for purposes of the closing?

A Mr. Delmonico came to the closing.

Q And did he deliver any checks for purposes --

A He ultimately did, but when he came in he said that the checks weren't made out, and Mr. Bayliss took him

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into his private office and had his secretary type them up, I believe.

Q And Mr. Bayliss was who?

THE COURT: Vice-president of the bank.

A Senior vice-president of the National Security Bank.

THE COURT: We have had that several times. And a member of the board of directors of your company, right?

THE WITNESS: That is correct.

Q And did there come a time where certain checks of the Deneso Corporation were delivered at the table that the closing was taking place at?

A Yes.

Q And can you tell us the amount of those checks that were delivered?

A Individually, I don't know, but the aggregate was a million seven.

Q One million, seven hundred thousand dollars?

A Yes.

Q Did Christos Netelkos show up at that closing?

A Yes.

Q Do you remember the approximate time that Chris Netelkos showed up at the closing?

A Some place between one and two.

Q And did Netelkos have any checks with him?

A Well, at the table, when the checks were put on the table, Mr. Gamarikian gave two checks to -- I think it was two checks to --

Q Let's back up a bit. Can you tell us whom Netelkos arrived at the closing on February 20, 1970?

THE COURT: I thought 15 times we discussed the fact that Mr. Feinberg doesn't know whom he arrived with.

MR. SEIDMAN: I think he does.

THE WITNESS: I only know that they walked into the room together. I don't know how they got into the building. It's a security guarded building.

Q Fine. Will you tell us whom Mr. Netelkos walked into the room with on February 20, 1970?

A Mr. Gamarikian.

Q And had you previously met Mr. Gamarikian?

A No, I don't believe so. I don't think I met him before the closing.

Q Did Mr. Netelkos introduce the gentleman as Mr. Gamarikian?

A Well, everybody introduced themselves in order, when everybody sat down.

Q And can you tell us what Mr. Gamarikian said?

A He said, "My name is Charles Gamarikian."

Q And did he indicate --

A And he said, "I'm the president of Carlton Cambridge."

Q And could you tell us who presented the checks on behalf of Carlton Cambridge?

A He gave a check or checks to Benjamin Werner.

Q Who was he?

A Charles Gamarikian. And Mr. Netelkos gave two checks to Benjamin Werner, and Benjamin Werner then said that they are made out wrong.

THE COURT: He said to both of them?

THE WITNESS: No, he said to Mr. Netelkos, "These checks are made out wrong," so Mr. Ezrine said, "let me see them." And then he asked the attorney for Mr. Werner, either Mr. Glass or Mr. Greenberg, if it would be okay if I endorsed them since they were made out to Manor Nursing Centres, Inc.

Q And what did that --

A And they said, "Yes, let him endorse them," and they said that's it.

So endorsed them.

Q Now, Mr. Feinberg, at the end of the closing

could you tell us whether or not the Carlton Cambridge checks and the Deneso Corporation checks were delivered to Benjamin Werner?

A All checks in the room were delivered to Benjamin Werner with the exception of one.

Q Up until the closing, had you heard of the corporation Upton Corp.?

A No.

Q And until the closing, had you heard of the corporation called International Transfer Corp.?

A No.

Q Do you recall whether or not Mr. Ezrine spoke to a -- the attorney of or for Carlton Cambridge on February 20th, at the closing?

A A call came in for Mr. Gamarikian, and it was identified as his attorney, and Mr. Netelkos, Mr. Gamarikia and Mr. Ezrine were in the corner where the phone was, and they had an extended conversation, I would say ten or 15 minutes.

THE COURT: I am not clear. Are you saying they spoke on the phone to this caller or they spoke to each other?

THE WITNESS: I'm sorry. I will be clear on it. A call came in, and it was supposed to be the attorney. I don't know who was on the phone.

THE WITNESS: There were only two discussions about the depositing of checks.

Q Can you tell us who said what?

A When -- when Mr. Werner came in, Mr. Bayliss asked him if he had the checks that was made out to me, and he said he did. He said, could he please have it, then, and Mr. Werner gave him the check and asked me to please endorse it -- Mr. Bayliss asked me to please endorse it. He then gave it to a messenger, because he wanted that check through before three o'clock, because a check had been issued for $25,000 to Chris Netelkos. That was one.

Number Two, Mr. Netelkos was most insistent that his checks be deposited that night. He was most insistent that he be assured that they would be deposited, and, if I remember correctly, Mr. Ezrine dictated a letter in which he assured, I guess, Carlton Cambridge and Netelkos that the money would be deposited, and they called the Corn Exchange Bank or the Chemical Corn Exchange Bank, whatever the name was -- they called the bank, and the bank made some arrangements to accept the late deposit. At least that's what we were told.

Q When you left the --

MR. SEIDMAN: Strike that.

Q At the closing, did there come a time that it was determined that there did not appear sufficient funds for purposes of closing the offering?

THE COURT: When, did you ask? At what time?

MR. SEIDMAN: February 20th, your Honor.

THE COURT: Any particular time? At the end of the closing?

Q Did there come a time at the closing on February 20, 1970, Mr. Feinberg, where it appeared that there were not sufficient funds to close the public offering?

A Yes. The attorney for Mr. Werner, Mr. Glass or Mr. Greenberg, tabulated the checks and said they were short $50,000, and Mr. Ezrine said that $50,000 out of a $4,500,000 underwriting was not material, and Mr. Greenberg said, "Well, but you still want to sell it."

I piped up and said, "Can I buy it for one of my friends?" And Mr. Ezrine said, "Yes. You can do anything you want with your money."

Theoretically, it had been deposited, he said, by Mr. Bayliss, and I had a receipt for it in the form of a credit memo.

THE COURT: What had been deposited?

THE WITNESS: My checks had already been deposited, and I was issued a credit memo.

Benjamin Werner's attorney then said, "Okay. Make out the check to Benjamin Werner," and Benjamin Werner said, "Put whoever's name you want on the back of the check so I'll know what it's for."

Q And did you do that?

A I certainly did.

Q Up until that time, Mr. Feinberg, can you tell at what time you had ever been to a closing of a public offering, if at all?

A I had never been to a public offering at all prior to that one.

Q Up until that occasion had you been to many real estate closings?

A Yes.

Q And can you tell us whether or not it is customary at real estate closings, if you know, based on your experience, to issue what is called simultaneous checks or have simultaneous exchanges?

A There are always checks made out by the buyer and seller, and there are always closing statements prepared. There are always two sides of checks, depending on who has to pay the taxes and the escrow for the taxes, adjustments if required, all normal deposits. It depends on the type of closing.

I would like to finish the question, to make sure everybody knows it --

THE COURT: You mean, finish your answer.

THE WITNESS: You asked me about the writing of a check. I wrote three of them, because nobody could agree on the totals. I don't want it left unsaid. I did write the three of them.

THE COURT: You mean you wrote and delivered three, or you kept substituting one for the other?

THE WITNESS: No. I wrote a check for $50,000. They then --

MR. WILSON: That is Government Exhibit 90, your Honor.

THE WITNESS: They then said something to the effect that they were short $14,000 or $49,000 -- I don't remember which came next, but there were three numbers, 50,000, I think, 49-something and 14-something, the sum total of about $113,000 in checks that I personally wrote at that closing.

THE COURT: All right.

Q Now, Mr. Feinberg, up to February 19, 1970, had Manor Nursing Centers, Inc. paid any legal fees for services rendered to Mr. Ezrine for whatever legal services he was rendering or had rendered for purposes of the

preparation of the prospectus, its underlying material and any other legal work up to that time?

A No. We didn't pay him any money, because the arrangements that were initially made were that he was doing it on a contingency basis.

Q And by a contingency basis, did it mean --

THE COURT: What did that mean?

MR. SEIDMAN: Yes, your Honor.

Q On a contingency basis: Would you tell the jury and the Court what that meant?

A That meant that in the event there was no underwriting, that meant I wouldn't have to pay him a fee.

Q As you understood your legal agreement with Mr. Ezrine, if there had been no closing on February 20, 1970 or on any date thereafter, would you have had to pay Mr. Ezrine a fee?

A No. I said if there was no closing -- if there was no underwriting, there would be no fee.

Q Now, Mr. Feinberg, when you left that closing, can you tell us whether or not you believed that the closing had closed successfully?

A Certainly, I did.

Q Well, did there come a time thereafter-- and would you specify when -- that you determined or learned

that there was a problem with certain of the checks that had been delivered at the closing?

A Yes. The following week.

Q Will you tell us how you learned about it, who said what to you and when you learned about it?

A Tuesday the 24th, I guess -- 25th, 26th -- Tuesday was the 24th. Either the 24th or the 25th, Tuesday or Wednesday, I received a phone call from Mr. Bayliss that the -- I don't know which came first -- that the checks bounced or that the underwriters stopped payment on the checks, but those were the things. There were several phone calls on that day, and I can't tell you which came first.

Q However, did you learn that certain of the checks had either bounced, or payment had been stopped on those checks that had been delivered at the closing?

A I learned about both of them yesterday.

Q Would you tell us, if you know, what checks you learned had not been properly honored that had been delivered to Benjamin Werner Company, the underwriter, at the closing?

A I knew about the $1,700,000 of Denesco Corporation's checks. I knew about the 830-some -- 843,000 or 832,000, 832,500 --

Q And when were you informed of that?

MR. WILSON: Objection. Let him finish.

MR. SEIDMAN: I thought he had finished.

A 832,500 from Netelkos' two companies. And I received a call from our bank about our company's checks, and then I found out from somebody that the underwriter had stopped payment on the checks.

THE COURT: I don't understand that. What do you mean when you say "our company's checks"?

THE WITNESS: Well, I had issued checks from 133 County Road, Inc.

THE COURT: You are talking about Manor Nursing?

THE WITNESS: No.

THE COURT: Checks of 133 County Road, Inc.?

THE WITNESS: County Road, Inc.

THE COURT: For how much, approximately?

THE WITNESS: Several hundred thousand dollars, one hundred and some, two hundred and some --

THE COURT: I know this from the record, but I have forgotten: To whom were they payable?

THE WITNESS: Vendors.

Q Now, you first learned about that when, Mr. Feinberg? When did you learn about the bounced checks?

A I would say Tuesday and/or Wednesday.

Q And that is February 24th and February 25th of the year 1970; is that correct?

A Yes.

Q Could you tell us what you then did when you learned about that situation?

A Well, I first called back to Mr. Bayliss to find out if he could check a lot faster than I could with the banks what happened. I think that's how I learned the payment was stopped. And I called Mr. Ezrine, and Mr. Ezrine said he would take care of the Deneso checks; he would get those made good, not to worry about those, because he said something to the effect that he had already spoken to them when he got the call -- when he got a call from Benjamin Werner, and he asked me if I would get hold of Carlton Cambridge and find out what happened with these checks that came back.

Q And did you sepak to anyone at Carlton Cambridge concerning their bounced checks?

A I spoke directly to Christo Netelkos.

Q What did Christos Netelkos tell you?

A He said he was having a problem with the bank and that there was money there.

I said, "If there is money there, the bank doesn't send them back for insufficient funds. They send them back for either funds in transit or uncollected funds, but not if there was a deposit made."

He said he was having trouble with the bank and to relax, he would get it straightened out.

Q Do you recall on what date you talked to Christos Netelkos?

A Wednesday or Thursday.

THE COURT: Is that the 26th or 27th?

THE WITNESS: Yes, whatever date that is.

Q Did there come a time that you spoke to Mr. Ezrine again after he had told you that he would take care of making sure that the Deneso checks were honored?

A He said they were trying to. They were trying to make good their checks. There was an elaborate story there --

THE COURT: Hold it. Tell us what somebody said.

Q Tell us what somebody said to you.

A There was an elaborate story told to me by --

THE COURT: Don't use those words. Just tell us

what somebody said.

Q Did anyone else say something to you?

A You are still talking about Mr. Ezrine?

THE COURT: It is not proper for a witness to say there was this, that or the other thing. It is only proper to say what Mr. Ezrine said.

THE WITNESS: I don't know how to repeat it. It was complicated.

Q What was the substance, in words or substance? Tell us what Mr. Ezrine said to you.

A It had something to do with the certificates of deposit that were in one bank waiting to be moved for another bank. I didn't understand it, but he finished off by saying, "Don't worry about it, I'll take care of it. You worry about the old people."

Q Meaning the people --

A At the nursing home.

Q By the way, Mr. Feinberg, are you still employed at the Manor Nursing Home?

A Yes, I'm the licensed administrator.

Q Have you been so employed at that nursing home through this entire period of time that you are giving testimony about?

A Yes, except for a period of eight months I was

A F T E R N O O N S E S S I O N

[2:00 p.m.]

[In the robing room:]

MR. SEIDMAN: Good afternoon, your Honor.

If your Honor please, on the issue of restitution, I would appreciate an opportunity to be heard on that matter.

THE COURT: Is there anything new?

MR. SEIDMAN: From my vantage point, that's correct, your Honor.

THE COURT: What? That there is something new? I asked you about that before.

MR. SEIDMAN: You had, and I thought through your Honor's approach to the manner, and I would like to posit a different position concerning what place restitution would properly have in this case.

THE COURT: What is that?

MR. SEIDMAN: If your Honor please, the Government has put in its case, and there is no doubt in my mind, and I feel there could be no doubt, most respectfully, in your Honor's mind, that the aura and the concept that have filled this courtroom directly or indirectly for the jury to consider is the fact that the monies that were purportedly received with respect to this underwriting

were in fact lost to the general public, and there is no doubt in my mind that has been and is the impression that has been created by Mr. Wilson in the manner that this case has been presented.

The truth of the matter is that, for whatever reason, all those, as I look at the facts of this case --

THE COURT: May I try and cut through this, Mr. Seidman? I think, as I said earlier today, you have some good ideas from time to time, but you take so long to articulate them.

I would like to ask you this:

Will you describe the circumstances under which Mr. Feinberg make restitution? Was it or was it not the result of litigation and a Court Order?

MR. SEIDMAN: It is a combination of both, your Honor.

THE COURT: And when did it occur?

MR. SEIDMAN: Prior to there being any investigation that was officially commenced, certainly at least a year prior or approximately a year prior to there being any civil action by way of disgorgement being commenced in this matter, Mr. Feinberg, after consultation with Mr. Bernstein, determined that obviously this had been an improper public offering, in a technical sense, and he

thereupon set out seeking to repurchase stock from those who had purchased it at the offering.

THE COURT: At what price?

MR. SEIDMAN: At the price that they paid for it.

THE COURT: When you say he thereupon sought to do so, what did he actually do?

MR. SEIDMAN: As I understand the facts, he went to the transfer agent and sought to obtain a computer print-out of those named individuals, with addresses, who were the original subscribers to the transaction, and he then set about repurchasing the stock at the original offering.

I have no objection to having Mr. Feinberg here, your Honor, so that I am not misstating any facts.

THE COURT: I will ask the Government what they understand the facts to be regarding the so-called restitution.

MR. WILSON: Your Honor, Mr. Feinberg has testified under oath that the first time he commenced any program of repurchase was after he had been down to the SEC and was advised by the SEC that they were investigating this matter. In addition, the repurchases that he did make were repurchases of stock from his friends, not the general public. I believe the checks that were --

THE COURT: You mean the repurchases that he made at that period of time?

MR. WILSON: At that period of time, which is April of 1971 and not before.

The repurchases become kind of complex. They are made through an outfit called U. S. Leisure Lands, through George Quinn. Some people got land back instead of monies. Some people got money back. All of it, your Honor, stems and flows from Mr. Feinberg having received a subpoena in September --

THE COURT: Do you mean, it occurred after ?

MR. WILSON: After he got the subpoena.

MR. SEIDMAN: If it is part of the Government's theory that this conspiracy continued up to and including the date of the indictment, I have correspondence from Ivan Ezrine where up to the time he pled guilty here in this matter he indicated to Mr. Feinberg that there was no need to make restitution, that this is a -- I am paraphrasing, I am not saying that those are his exact words -- that this was a perfectly legal transaction.

What I am concerned about is the impression created in the jury's mind as to whether or not factually there has been a loss to the people who purchased this stock at the underwriting.

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MR.WILSON: As a factual matter, your Honor, while there has been restitution made, it is not to all people who purchased Manor Nursing stock. The trustee drew a line between those people who had bought stock up until March 6th and those people who had bought stock thereafter. He has paid a hundred per cent plus some to the people who bought before March 6th, but everybody who bought after got six cents on the dollar or nothing on the dollar, depending on their purchase date.

If the concept is one of loss to the public, I think it is irrelevant.

THE COURT: I think loss to the public is irrelevant. Certainly, if there were no substantive counts here, it wouldn't make any difference whether the closing --

MR. SEIDMAN: I agree, your Honor, except it is --

THE COURT: Let me finish, for once.

MR. SEIDMAN: I apologize, your Honor.

THE COURT: As I see it, the question of restitution is irrelevant as a defense. On the other hand, I do believe that it is something which might be considered by the jury with regard to the question of whether Mr. Feinberg intended or did not intend to enter into a conspiracy and to do the acts which he is accused

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argue to the jury. I think it is a powerful argument, and I myself think that Mr. Seidman may be making a practical error, which will only redound to the Government's benefit, but that is not the basis on which I am called upon to make a ruling.

1.2pm

MR. WILSON: Just so I can see what I can do, if the question is raised, I believe I will be entitled to cross-examine Mr. Feinberg as to Judge Motley's orders and, if necessary, to put in an official Court document which shows Mr. Lobell's distribution --

THE COURT: Who is he?

MR. WILSON: He was the trustee appointed by Judge Motley to do the collection, and he collected --

THE COURT: You certainly can do all those things, and I am stating, Mr. Seidman, that I think it would be his obligation, if we go into this subject, to cooperate in every way so we don't have to call witnesses on matters which are undisputed --

MR. SEIDMAN: I have been in touch with Mr. Lobell, and I know exactly what has transpired.

If your Honor please, if I may just take half a minute to give an analogy, if there was a red light --

THE COURT: Mr. Seidman, you have won your point. You must know the expression, "Quit while you are

of having done.

Therefore, with advance instructions on my part to that effect, I will allow you to question Mr. Feinberg, but, of course, Mr. Wilson, it seems to me, can have a field day on cross-examination.

MR. SEIDMAN: I understand, your Honor.

MR. WILSON: Your Honor, we submitted our memo ahead of time, because we did not want to get into what is clearly an area that does not bear on Mr. Feinberg's intention at the time he committed the acts that the indictment charges.

THE COURT: Well, I myself would not be persuaded by this as a juror, but I can see that an argument can be made that this is consistent with the attitude of a man who behaved in good faith throughout this transaction and was led by the nose by somebody else, and as soon as he found out -- I mean, this is his theory of the case; I don't buy it, but it is his theory of the case -- as soon as he found out that he had done wrong, he attempted to right the wrong.

MR. WILSON: But, your Honor, the undisputed evidence is that he did not seek to right his wrong until the SEC told him he was in trouble.

THE COURT: That is for you to bring out and

8 mpsr

winning."

MR. WILSON: I really think we should not be opening this up.

THE COURT: Mr. Wilson, I have great confidence in this jury, more than in most juries. It looks like a good, solid jury. They have been paying close attention. I don't think that they are going to be fooled, and I also think Mr. Feinberg is entitled to put his story before them and see if they buy it.

I will make sure that I will vigorously instruct them that this does not constitute a defense to any count in this indictment but that they can consider it in determining, when they ultimately must make the determination, whether Mr. Feinberg intended to the acts with which he is charged.

Now, Mr. Seidman, are you going to start on this right now?

MR. SEIDMAN: No.

THE COURT: When you come to it, I want you to tell me about it, so I can instruct the jury in advance.

MR. SEIDMAN: I have assiduously stayed away from it thus far.

[In open court; jury in box:]

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I R A F E I N B E R G , resumed.

DIRECT EXAMINATION [continued]

BY MR. SEIDMAN:

Q Do you recall, Mr. Feinberg, before we broke this morning you had identified Feinberg's Exhibit P and Feinberg's Exhibit Q, which was correspondence between Benjamin Werner Company and Ivan Ezrine whereby in those letters it was disclosed that on or about March 4th and 5th that checks totalling $1,700,000 had been returned as a result of insufficient funds; do you recall that?

A Yes.

Q At or about the time that you received Feinberg Exhibit P and Feinberg Exhibit Q, Mr. Feinberg, did you have any other conversations with Ivan A. Ezrine concerning the sale of stock in the Manor Nursing Center underwriting?

A The only other thing he told me is that he was working with an invester to buy 60,000 shares of stock for $600,000.

Q Did there come a time that he indicated to you what the outcome or result of that negotiation was?

A Yes.

Q What did Mr. Ezrine tell you, if anything?

THE COURT: Let's get some specifics on this. Where was it, when, what did he say?

THE WITNESS: $600,000 --

THE COURT: I said where was it?

THE WITNESS: This discussion was -- I think it was in Benjamin Werner's office.

Q Go ahead.

A He got $600,000 from the sale of stock to Mr. Haber. Then the next day --

THE COURT: Are you still quoting Mr. Ezrine or are you telling us something else?

THE WITNESS: No. I'm still talking about him.

THE COURT: Not talking about him. You are telling us what he told you?

THE WITNESS: He told me that he had gotten $600,000 from David Haber for 60,000 shares of stock. At the same time he said something to the effect that he had another sale of $600,000 because he had a deal in Daytona Beach, Florida for a hospital purchase that he had informed us of and he said that the doctors in the hospital didn't want money but they wanted stock.

Q And what if anything else --

MR. WILSON: Could we have some dates on when these conversations were taking place?

THE COURT: This is one conversation.

THE WITNESS: He told us one one day and one

the next day.

MR. SEIDMAN: On or about March 4th. That is the testimony about the letter.

THE COURT: That may be the conversation, but I'd rather have the witness tell me than you.

THE WITNESS: It seems that was the day I was at Benjamin Werner's office and there were a lot of letters signed.

THE COURT: You were there the day that he told you about Haber?

THE WITNESS: Yes, that was, I think the 5th.

THE COURT: When did he tell you about Daytona Beach?

THE WITNESS: He had told me about Daytona Beach the same time.

THE COURT: I asked you whether he had told you both of those things at the same time.

THE WITNESS: I'm sorry you got that impression. They were one day apart.

Q Which came first?

A Haber came first.

THE COURT: On March 5?

THE WITNESS: Yes.

THE COURT: And he told you about Daytona Beach

on March 6th?

THE WITNESS: The next day.

THE COURT: Where were you when he told you about Daytona Beach?

THE WITNESS: The Daytona Beach was in his office I'm sorry.

THE COURT: Who was there besides you and Mr. Ezrine, if anybody, on the first occasion at Mr. Werner's office.

THE WITNESS: Mr. Werner was there and his wife and the bookkeeper and an elderly gentleman that he used as a messenger.

THE COURT: Okay.

Who was there, if anybody, in Mr. Ezrine's office the next day when you were talking about Daytona Beach?

THE WITNESS: In his office -- the only other person in the suite of offices was his secretary.

THE COURT: All right, go ahead, Mr. Seidman.

MR. SEIDMAN: May I have this marked as Feinberg Exhibit R.

[Defendant Feinberg's Exhibit R marked for identification.]

Q Mr. Feinberg, I now show you Defendant Feinberg's Exhibit R for identification and I ask you whether or not

you have ever seen this piece of paper.

A Yes, I did.

Q Can you tell us at approximately what time you initially saw this piece of paper which is Feinberg's Exhibit R for identificatinn?

A I believe the very next day, about the 7th.

Q Can you tell us who showed you the original or a photocopy of Feinberg Exhibit R for identification?

A Mr. Ezrine had it. It was on one sheet of paper.

Q Can you tell me what Mr. Ezrine said to you when he showed you Defendant Feinberg's Exhibit R?

THE COURT: If he said anything.

Q If he said anything.

THE COURT: YOu know, Mr. Seidman, it would work much easier if you asked: Did Mr. Ezrine tell you anything about this?

THE WITNESS: He said he needed this stock for the doctors. He was planning on selling some stock. I'm very weak on this point. I apparently don't understand it.

THE COURT: You don't recall apparently what he told you fully.

THE WITNESS: I think I know what he said.

Q Tell us.

A He said something to the effect that there were 75,000 shares of Manor stock that were sold. Sixty thousand shares he needed back and ten thousand shares he had to get from another client, and he gave me a letter for about ten thousand shares, in addition.

Q Does this represent the true and accurate copy of what Mr. Ezrine showed you on that day?

A I personally made the Xerox copy in his office.

MR. SEIDMAN: Do you have any objection?

MR. WILSON: No objection.

THE COURT: Received in evidence.

[Defendant Feinberg's Exhibit R received in evidence.]

MR. WILSON: It might be good if I just took one quick look at it. I think I know what it is. I'm sorry, your Honor.

Yes, I have seen this. I have no objection.

THE COURT: May I see it, please, Mr. Seidman?

MR. SEIDMAN: Yes.

THE COURT: Are you going to bring to the jury's attention what documents constitute this exhibit? It really is constituted of, as I see it, a photocopy of three separate documents. Is that right?

MR. SEIDMAN: Yes, your Honor. I intended to

explain that, and I indicated to Mr. Feinberg that that was a photocopy.

THE COURT: I think the jury is left with the impression that it was one document.

It was altogether. They weren't torn apart. Go ahead.

MR. SEIDMAN: If I may, Feinberg's Exhibit R --

MR. WILSON: Can I have a voir dire on that document, your Honor?

THE COURT: Yes.

BY MR. WILSON:

Q Would you tell us exactly how you came to prepare this document, Defendant's Exhibit R?

A I didn't prepare it.

THE COURT: The piece of paper that you have in your hand you said you prepared.

THE WITNESS: I put it into a glassine -- like a holder, and put it in the Xerox machine and made a copy of it.

2pm Q What did you put into the glassine holder?

A These confirmations.

Q Were they three separate confirmations, were they on one sheet?

A Three attached.

Q They were all attached?

A Yes.

Q With perforations?

A There was a place to tear them apart, perforated spots.

MR. WILSON: No objection.

MR. SEIDMAN: At the time he saw them.

These are apparently three separate -- I would ask the jury to consider these to be three separate --

MR. WILSON: That is not the testimony now.

THE COURT: The testimony is that they were three different documents attached and perforated.

I didn't mean to make a fuss about it. I just wanted to be accurate.

MR. SEIDMAN: So do I.

THE COURT: And so does Mr. Wilson. That is why this trial is taking forever.

MR. SEIDMAN: Not at all, your Honor.

I would ask the jury to consider the fact that it indicates that the account number and it gives a number and thereunder, with respect to each of these, is the name of Ivan A. Ezrine as attorney, 370 East 68th Street, New York, New York. It is Ivan A. Ezrine as attorney --

THE COURT: On each one it says it.

MR. SEIDMAN: That is correct. And on the upper portion it says "Securities Description, Manor Nursing Centers, Inc", and in the upper left-hand corner, where it states, "You bought, you sold", there is indicated as two duplicate confirm one, duplicate confirm two and duplicate confirm three that each one respectively indicates that, to wit, Ivan A. Ezrine, as attorney, sold 25,000 Manor Nursing Center, Inc. at $10. You sold 25,000 Manor Nursing Centers, Inc. at a price of $10. You sold $25,000 Manor Nursing Centers, Inc. at $10.

THE COURT: Okay, Mr. Seidman, I think that is an adequate presentation.

MR. SEIDMAN: Thank you.

JUROR NO. 4: Does that mean that three different confirmations that they sold, 25,000 on each one?

THE COURT: That is right. That is what I make of it.

JUROR NO. 4: A total of 75,000?

MR. WILSON: I don't think there is any testimony on that. I think that is a good question.

MR. SEIDMAN: The reason the exhibit is offered ---

THE COURT: There are three separate confirmations for 25,000. I don't know any more than you.

MR. WILSON: May I read something from that diagram?

MR. SEIDMAN: YOu may read anything you wish.

MR. WILSON: I would simply point out: "Duplicate confirm Number One, duplicate confirm Number Two, duplicate confirm Number Three."

MR. SEIDMAN: I read that to the jury, also.

THE COURT: Yes.

May I see the document, while you are looking for whatever you are looking for?

Go ahead.

MR. SEIDMAN: Could I have that? I want to ask the witness a question.

BY MR. SEIDMAN:

Q When Mr. Ezrine showed you these pieces of paper, Mr. Feinberg, what did he tell you it represented, if anything?

A He said there were 75,000 shares of stock sold.

Q Do you know of your own personal knowledge whether it was or was not sold?

A I absolutely do not.

Q There is no doubt in your mind that this is what Mr. Ezrine showed you; is that correct?

A I'm positive.

Q I now show you Government Exhibit No. 77, Mr. Feinberg. Can you tell us whether or not you prepared this exhibit?

A I never prepared this.

Q Can you tell us, if you know, who did prepare this exhibit?

A Mr. Ezrine dictated it.

Q Do you know where Mr. Ezrine dictated it?

A I think --

THE COURT: Were you present when he dictated it?

THE WITNESS: Yes. I heard it being dictated.

THE COURT: Can you tell the jury?

THE WITNESS: I think it was in Benjamin Werner's office.

Q If you know, was Benjamin Werner present at the time that this was dictated?

A Yes.

Q And did there come a time that Mr. Ezrine asked you to --

MR. WILSON: Objection. What was said.

THE COURT: If it has to do with conversation relating to that, he can ask what Mr. Ezrine told him in relation to that letter, if anything.

Q What did Mr. Ezrine or Mr. Werner say to you --

THE COURT: Are you asking about Mr. Werner?

MR. SEIDMAN: Yes, your Honor.

Q What, if anything, did Mr. Ezrine or Mr. Werner say to you with respect to that letter when you first saw it?

A Well, I asked where they got the amount from and there was a discussion about four and a half million dollars, and that a little more than two and a half million dollars bounced. That left it at just a little bit under two million, and that --

Q When you say "they", will you please specify who is saying what in this conversation?

A I think Mr. Werner also wanted to know where the number came from, and Mr. Ezrine said that, "Well, four and a half million less two and half million, the checks that bounced, left about a million nine something, and he sold $600,000, and $600,000, which made about three million one-something. He said he didn't have any better figure than that and if he was wrong, that he couldn't be wrong but for a few pennies.

Q Would you explain to the jury, if you would, how the $3,000,000 was arrived at?

A I think I just did.

THE COURT: He just did. He can't say anything

but what Mr. Ezrine said and as I understand it, you said that Mr. Ezrine said that from the four and a half million dollars which should be received he deducted somewhat more than two and a half million dollars in checks that bounced.

THE WITNESS: Yes.

THE COURT: That left about a million, nine hundred thousand dollars?

THE WITNESS: That is correct.

THE COURT: He added to that $600,000 and $600,000, a million two, which comes to three million two?

THE WITNESS: He said something else, something that our checks bounced. That was the number that he had on his note schedule.

Q Was it on or about March 5, 1970 that Mr. Ezrine makes you aware --

MR. WILSON: Objection.

THE COURT: Sustained.

Q Is it on or about March 5, 1970 that you first --

THE COURT: What did Mr. Ezrine or did Mr. Ezrine --

Q Did Mr. Ezrine inform you of the existence of Mr. Haber?

THE COURT: Ever?

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MR. SEIDMAN: David Haber.

Q Did Mr. Ezrine ever inform you of the existence of Mr. Haber?

A Yes.

Q Could you tell us at or about what time it was?

A March 4, March 5.

Q Did Mr. Ezrine inform you about the purported purchase of stock through White & Company?

A That was a day or two later.

.3pm Q And did that involve the purchase or sale --

MR. WILSON: Objection.

THE COURT: Sustained.

What did that involve?

Q What did that involve?

A What did what involve?

Q The White & Company paper.

THE COURT: Are you asking what it involved or what did Mr. Ezrine tell you?

Q What did Mr. Ezrine tell you about it?

A He said there were 75,000 shares sold.

Q And at about what date is he telling you this?

MR. WILSON: Just asked.

THE COURT: He just said a day or two later.

MR. SEIDMAN: Very well, your Honor.

Q Mr. Feinberg, did there come a time that you were made aware of the fact that the checks of Upton Corp. and International Transfer Corp. had bounced?

A Yes.

Q And when did you first become aware of that?

A I think I told you before. It was about Tuesday or Wednesday of the following week, after the closing.

Q Did you have any conversations with Mr. Netelkos concerning that matter?

A Yes, I did. He said he was having some difficulty with the bank and I believe I testified this morning --

THE COURT: I believe you did also.

A -- we talked about funds in transit or uncollected funds, not insufficient funds. I said, "The trouble you are having is that there is no money in the account."

Q Did there come a time that you thereafter had any further conversation with Mr. Netelkos concerning these checks that were returned for insufficient funds?

A Yes. He said --

Q Can you tell us when, if you recall?

A When I called him -- let's just say the 25th. It was the 24th or 25th. Let's just say the 25th. I called him on the 25th. He told me that he had some trouble with the bank.

THE COURT: Don't tell us all again. You told us the story.

A On the 25th or 26th I spoke to him again and he said he would give us some money shortly, when he straightened it out, and I believe we got a $50,000 check shortly thereafter.

Q Do you recall from what corporate entity that $50,000 check came?

A It didn't bounce. I didn't care where it came from.

Q Do you recall where it came from?

A No, I do not.

Q Can you tell us whether or not you ever heard of a corporation called Method Leasing Company ?

A Yes, but it seems to me much later than that time

Q However, there was a check for $50,000 that was paid by Mr. Netelkos on behalf of the bounced checks; is that correct?

A It was the latter checks, but I believe the first one was 50,000.

Q Can you tell us, if you know, to whom that was delivered?

A I went to pick it up.

Q To whom did you deliver it?

photocopies.

THE COURT: You mean whether he saw the original -

MR. SEIDMAN: Yes.

A These are some of the -- Well, I don't think -- These are some of the checks that we got from Mr. Netelkos.

THE COURT: You mean they are photocopies?

THE WITNESS: Photocopies of checks.

MR. WILSON: I have no objection.

THE COURT: All right. Received in evidence.

(Defendant Feinberg Exhibit S for identification was received in evidence.)

MR. SEIDMAN: May I, your Honor --

THE COURT: Must you? It is only a bunch of checks

MR. WILSON: Netelkos testified he delivered these checks. You cross-examined him about that.

MR. SEIDMAN: Then I have that stipulation --

THE COURT: It is not a stipulation, no. It is just a fact that there is no dispute in the record about.

MR. SEIDMAN: All right, your Honor.

Q Did there then come a time -- As I was having that exhibit marked, Mr. Feinberg, you indicated that Mr. Netelkos issued a promissory note --

THE COURT: No. He said Netelkos said he would issue a promissory note.

MR. SEIDMAN: Pardon me, your Honor. I obviously cannot do two things at a time, that is, listen and have an exhibit marked.

A He said he would prepare a promissory note for the money that he owed. Mr. Weiner insisted that we get ten thousand dollars for the expenses, which was several days -- I don't know, so many days of interest, and Mr. Ezrine prepared a note --

THE COURT: Wait a minute. Were you there? Where did all this occur?

THE WITNESS: I discussed this with Mr. Weiner ove the phone. I went to Mr. Ezrine's office. He prepared the note --

THE COURT: We don't know all these things. You have to tell us.

THE WITNESS: I'm sorry, sir.

THE COURT: All right. Go ahead.

You went to Mr. Ezrine's --

THE WITNESS: He prepared a note.

Q Did you tell Mr. Ezrine what Mr. Netelkos had said to you prior to the preparation of that note?

A Exactly. That's how he knew how to make out the note.

Q All right. And tell us what happened thereafter an

who said what to whom.

A He made out the note -- No. Before he made out the note he wanted to know what was being pledged, because it was called a pledge security agreement; and I called up Mr. Netelkos' office, and he said he was going to pledge some 130,000 shares of First World Corporation, that was then trading, he said, at about ten dollars.

And Mr. Ezrine prepared the note. I took the note back to New Jersey with me, went to Mr. Netelkos' office. He signed it and said he would deliver the stock to me.

Q Did Mr. Netelkos in fact deliver that stock to you?

A Never.

Q Now, this note is executed at or about what time, Mr. Feinberg?

THE COURT: Is the note in evidence?

MR. WILSON: Yes; it is, your Honor.

THE COURT: Unless you are trying to test Mr. Feinberg's memory, why don't you give him the note?

MR. WILSON: It's Government's Exhibit 33, your Honor.

MR. WEIDMAN: I want to see what his memory is.

THE COURT: I would rather not take the time if it isn't necessary.

MR. SEIDMAN: The exhibits are voluminous.

THE COURT: Well, voluminous or not, are they the source of accurate information?

Q I now show you Government's Exhibit 33, Mr. Feinberg, and ask you whether or not --

THE COURT: Ask him what it is.

Q (Continuing) I ask you what it is.

A This is the note that I just spoke about.

Q Do you recognize the signature at the bottom thereof?

A It's Mr. Netelkos' signature.

Q And I show you Government's Exhibit Number 34 and ask you whether you know what it is.

A That's the pledge security agreement that I just referred to.

Q I ask you to look at the signature on the back of Government's Exhibit Number 34 and ask you whether or not you recognize it.

MR. WILSON: He testified that that's his signature, your Honor.

Q Did you have any other conversations with Mr. Ezrine concerning the note and the pledge security agreement at that time?

A He asked me if I had gotten it signed.

Q And what did you say to him?

A I said, yes, I did.

Q Now, if you know, could you tell us whether or not the full sum of $622,500, which the note represented, was payable on or about September 4, 1970, or was it the intent that Mr. Netelkos --

THE COURT: No. Are you asking him what the note says?

MR. SEIDMAN: No, your Honor.

THE COURT: Then what are you asking? Whether the had a conversation?

MR. SEIDMAN: I will withdraw that question and re-phrase it.

Q Prior to September 4, 1970, did Mr. Netelkos pay any part of the moneys that were represented by the note which is Government's Exhibit Number 33?

A Nothing.

Q Prior to the due date of September 4, 1970, did you have occasion to meet Mr. Netelkos concerning the note?

A Yes.

THE COURT: When?

Q Can you tell us when?

A The first week in August.

THE COURT: Where?

THE WITNESS: His office, Hasbrouck Heights, on the

Boulevard.

THE COURT: All right. Tell us what he said and what you said.

Q Was anyone else present?

A Mr. Gamarikian.

Q And will you tell us what he said to you and what you said to him?

A He said that as a result of the Orvis Brothers settlement with him, when they were being put out of business he had money tied up in a Swiss bank account that he can't get out until the end of January of the following year, and would it make any difference, because he couldn't honor the note -- would it make any difference to us if we gave him -- if he gave us funds in a Swiss bank that we could get on January 31st of 1971.

I said --

Q What did you say to him.

A I said, "I don't know. I would have to check with Mr. Weiner and with Mr. Ezrine.

Q Was there any other part to that conversation?

A Well, we discussed that the money was frozen until the first month of the following year, at which time it would be free, and he would have our part put in in an account in our name.

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what you said to Mr. Netelkos at that meeting in Mr. Weiner's office?

A The discussion was basically --

THE COURT: I thought it was at Mr. Weiner's home.

THE WITNESS: It was at his home.

MR. SEIDMAN: Pardon me.

THE COURT: What was it?

THE WITNESS: It was basically a discussion between Mr. Netelkos and Mr. Weiner.

Q Fine. And, if you can, can you tell us what Mr. Netelkos said?

A He informed Mr. Weiner of what he had informed me: that he had funds in a Swiss bank that were -- I don't remember the expression -- locked up, bottled up, frozen -- something -- that he could not get out until January 31st of the following year, and that he wanted to go to Switzerland and that he wanted to transfer the funds from -- out of his account, out of his name into our name, and would that satisfy the note requirement, because he said he would not be able to meet the note, and Mr. -- Can I tell you what Mr. Weiner said?

Q Go ahead.

A He asked him what he really wanted, and Mr. Weiner said, "Well, first of all, I will take American money," and

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he said, "Second of all, if it has to be a transfer of funds, I have to get an unqualified verification from the United States correspondent from that bank, because I absolutely don't know Swiss banking rules."

THE COURT: An unqualified what from the correspondent?

THE WITNESS: Verification from the correspondent of that Swiss bank in the United States.

A (Continuing) Mr. Netelkos volunteered to bring back a verification, and Mr. Weiner told him that wasn't normal auditing procedure; he would send it off himself as soon as he received the documents that were necessary.

Q Now, did there come a time when Mr. Netelkos produced any documents or papers?

A Yes.

Q Can you approximate the time, place and who was there?

A Some time just about the middle of October of 1970, on a Sunday, he called and said he had gotten back late last night and that could Mr. Weiner and Mr. Ezrine and I meet him at my office, which was on Route 4.

Q And --

A The three of us did meet him. He produced a folder full of documents.

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Q And he produced a folder full of documents?

A Yes.

Q Now, I show you Government's Exhibit 35 in evidence, consisting of numerous pages, and ask you whether or not you recall these to be the papers --

THE COURT: Ask him whether he knows them, has seen them, and, if so, what they are.

A These are -- these are the papers that Mr. Netelkos gave us, but he had given us another book that went through -- with it, a financial statement of the bank.

THE COURT: We are just asking about those.

THE WITNESS: Those alone?

THE COURT: Yes. Those were among the papers he gave you?

THE WITNESS: Yes.

Q Now, at the time that he gave you these papers, during October of 1970, did he give you any other papers along with Government Exhibit 35?

A There was a small, like a booklet type of affair. I guess it was the bank statement. And it seemed to me there was another sheet that had a write-up about the bank on it. It may be in my folder.

Q It may be in your folder that you brought to the court, you mean?

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A No. That I had given you previously. The Pendafl... folder.

Q And at that meeting, what if anything was said by either Mr. Ezrine or Mr. Weiner?

A Well, Mr. Ezrine was satisfied; I was satisfied; Mr. Weiner said he would verify it in the normal course of business when he did an audit on the company's books and records.

Q May I ask you --

A There was something else said, by Mr. Netelkos.

Q Go ahead.

A He said that the Swiss bank put ten thousanddollars more into that account than they were supposed to, and also the rate of interest was higher than the rate we agreed on. We agreed on, I think, eight per cent, and that bank was payi... nine and a quarter. He wanted us to give him a check for ten thousand dollars, because they had put ten thousand extra ... there, and he wanted us to give him the difference of the interest from the eight or eight and a half to the nine and a quarter per cent or nine and a half per cent, and I said --

MR. WILSON: May we know where this took place and who else was present?

THE WITNESS: Mr. Weiner and Mr. Ezrine. At my office, 2 East State Highway 4, Paramus, New Jersey.

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THE COURT: All right.

A (Continuing) And I said, "Your funds were tied u until January 31st, anyhow, so on January 31st, when we get the money, we will give you your ten thousand dollars and the difference between the interest."

Q I now show you Government's Exhibit Number 36, Mr. Feinberg, and ask you, if you know, who prepared that sheet, or exhibit.

A I don't know. Let's put it this way: I didn't.

Q Did you prepare it?

A No; I didn't.

Q Do you know when it was prepared?

THE COURT: Would you answer for the record, Mr. Feinberg?

THE WITNESS: Oh, I'm sorry.

A No.

MR. WILSON: May the jury be told what that document is?

THE COURT: What is Government Exhibit 36, Mr. Seidman?

MR. SEIDMAN: That is a letter from Christos Netelkos to Manor Nursing Centers, Inc., concerning the account at the Banque de Gestion Privee, Switzerland, signed by Christos Netelkos.

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THE COURT: And what is it?

MR. SEIDMAN: I was about to say that.

THE COURT: Good.

Q Will you tell us what it is?

MR. SEIDMAN: I am not as quick as you are, your Honor.

A That's the answer that Seymour Weiner & Co. received from the bank in Switzerland.

THE COURT: Well, I don't want to be fussy about this again, but how do you know that?

THE WITNESS: He told me when he gave it to me.

THE COURT: I don't think it can be admitted on that basis.

MR. WILSON: I would have no objection to that.

THE COURT: That is another matter, as long as there is agreement on it.

MR. WILSON: Yes. We have no objection to it, for what it purports to be: a letter from a bank.

THE COURT: You agree that for the purposes of this case it is a letter from the entity whose letterhead is on the --

MR. WILSON: I only know that that is a document that I have seen before and will allow it into evidence for what he says it is, as something that he was shown by somebody

THE COURT: There is no objection to that.

MR. SEIDMAN: Not "by somebody". By Mr. Weiner.

THE COURT: I will admit it into evidence as a document shown to the witness -- by Mr. Weiner?

THE WITNESS: Yes.

THE COURT: And represented by you as having been received?

THE WITNESS: Yes.

MR. WILSON: I have no objection to that.

(Defendant Feinberg Exhibit T for identification was received in evidence.)

xx

THE COURT: May I see it?

MR. SEIDMAN: Do you have the original?

MR. WILSON: No; I don't think I do. If I do, I will provide it to you.

THE COURT: All right.

MR. SEIDMAN: If your Honor please, I respectfully state that if Mr. Wilson has the original of this exhibit, which is Feinberg's Exhibit T, I would most respectfully ask him to produce it.

MR. WILSON: Mr. Weiner's files were subpoenaed and were produced, and I will check those files to see if the original of that letter is in them.

THE COURT: All right.

Q Mr. Feinberg, when you were shown the letter, Feinberg Exhibit T, were you at that point in time represented by Mr. Ezrine or by Mr. Lawson Bernstein?

A What was the date on that letter? December 10th?

Q December 10, 1970.

A I believe it was Mr. Lawson Bernstein.

Q And, if you can, could you best tell us the date that you initially met Lawson Bernstein?

A November 30th or December 1st, a day or two either way.

Q And, if you know, can you tell us whether or not the information or contents or substance of information which was contained in Feinberg's Exhibit T was included in Feinberg's Exhibit N?

MR. WILSON: The document speaks for itself.

THE COURT: It does speak for itself.

MR. SEIDMAN: Very well.

THE COURT: Incidentally, the jury has no idea what Defendant Feinberg's Exhibit T is.

MR. SEIDMAN: May I read it?

THE COURT: I wish you would.

MR. SEIDMAN: Thank you.

I will ask you to search your records for the original, as you will do, I'm sure.

[Mr. Seidman read from Defendant Feinberg's Exhibit T.]

Q Did there come a time, Mr. Feinberg, that Mr. Ezrine requested the payment of monies with respect to the legal services he had rendered on behalf of the public underwriting?

A Are you talking about back to February 20 right now?

Q Yes, February 20.

A Yes.

THE COURT: Did he ask for it?

THE WITNESS: Yes, he submitted a bill and asked for it.

THE COURT: On February 20 or when?

THE WITNESS: On February 20. The bill is on the table under that folder.

MR. SEIDMAN: May I have this marked for identification?

[Defendant Feinberg's Exhibit U marked for identification.]

Q I show you Feinberg's Exhibit U for identification, Mr. Feinberg, and ask you whether or not you recall receiving the original of what is Defendant Feinberg's Exhibit U for identification.

A Yes, I do.

Q Can you tell us on what date you received the original?

A February 20.

Q And could you tell us what this is?

A That is a bill for all the services performed by Mr. Ezrine from, I guess, Day One until and including February 20.

MR. WILSON: No objection, your Honor.

THE COURT: It is received in evidence.

[Defendant Feinberg's Exhibit U received in evidence.]

MR. SEIDMAN: Would your Honor mind if I read this to the jury?

THE COURT: You don't want to read that whole thing. It is a bill for services rendered and you can say the amount and the date. It clearly has to do with this transaction.

MR. SEIDMAN: The date is February 20, 1970. I respectfully ask the jury that it read the legend on top indicating Ivan A. Ezrine and the contents as to what he is requesting payment for from Manor Nursing Centers, Inc., and I would ask that you consider the fact that the payment requested is for $50,000, together with disbursements.

Q On or about February 20, Mr. Feinberg, did you cause to be issued a check in payment of this bill?

A Yes, I believe I did.

Q Was it in the sum of $50,000 payable to Mr. Ezrine?

A Yes.

Q Would you tell us what happened to that check, if you know?

A He bought stock with it.

Q However, were the proceeds on it paid by the

bank upon whom that $50,000 check was issued?

THE COURT: I think you mean did the check clear.

MR. WILSON: From whom to whom.

THE COURT: The check was payable to Mr. Ezrine, I take it; is that right?

THE WITNESS: Yes. I'm not sure if it cleared the bank, sir.

MR. SEIDMAN: Might I have this marked Defendant Feinberg's Exhibits V-1 and V-2 for identification.

[Defendant Feinberg's Exhibits V-1 and V-2 marked for identification.]

Q Mr. Feinberg, I now show you Feinberg Exhibit V-1 and V-2 and ask you whether or not you previously saw both V-1 and V-2.

A Yes, I did.

Q Would you tell us what V-1 is and what V-2 is?

A V-1 is the prospectus of December 8th that came off the printing press on the morning of December 8.

V-2 is the prospectus of December 8th that Mr. Weiner and I left at two o'clock in the morning.

THE COURT: Left where?

THE WITNESS: Left the printer.

THE COURT: Do you mean a proof?

THE WITNESS: The final proof we saw at two o'clock in the morning and the prospectus was delivered about nine o'clock the next morning.

THE COURT: So V-1 is as delivered at nine o'clock the next morning and V-2 is the print that you left with the printer at two o'clock?

THE WITNESS: That is correct.

Q Now, if you can, can you point out the distinction between V-1 and V-2?

A Both of these are identical with the exception of the name of the bank.

Q When you left the printer, can you tell us what you understood the escrow bank would be?

A I didn't understand. I read it.

Q What did you read then and there?

A National Community Bank, Maywood, New Jersey.

Q When did you first find out that the front page of the prospectus, which is V-2 or the proof of the prospectus which is V-2 had had the escrow bank changed to Chemical Bank of New York?

A Sometime the next day.

THE COURT: That would be December 9 or December 8th?

THE WITNESS: December 8th. They were printed

during the night of December 7 - 8.

THE COURT: Thank you.

Q What, if anything, did Mr. Ezrine say to you about the change in the bank?

A He said that he had received a call from the Attorney General's Office in New York and they insisted that the escrow agent be in the State of New York because Mr. Werner was a New York licensed broker-dealer.

We found it peculiar that we would get a call after two in the morning.

THE COURT: You weren't told that.

THE WITNESS: I'm sorry.

THE COURT: The jury will disregard Mr. Feinberg's deductions.

Q I now show you Feinberg Exhibit W and ask you whether or not you recall seeing either the original or a photocopy of that exhibit for identification?

A I got a copy of this, but a long time after the date that is on here.

Q And I ask you whether or not you recognize the signature on Feinberg W for identification.

A It appears to be Ivan Ezrine again.

Q And does it relate --

THE COURT: What does it relate to?

Q What does it relate to?

A It talks about the special escrow account being opened by the underwriter at the Chemical Bank, 190 Rector Street, New York, New York.

THE COURT: Okay.

MR. SEIDMAN: At this point I offer this exhibit in evidence.

MR. WILSON: I'm not sure what the foundation is for it. It is addressed to the Attorney General of the State of New York.

THE COURT: It would be evidence only that Mr. Feinberg received a copy of that letter.

MR. WILSON: He did not at the time --

THE COURT: Just a minute. Sometime after it was sent.

MR. WILSON: Can we have a little more on that? Can I ask some questions on the voir dire, your Honor?

THE COURT: Yes.

BY MR. WILSON:

Q When did you first see Defendant Feinberg's Exhibit W?

A I guess sometime in February.

Q In February?

A Yes.

Q You are sure of that?

A I'm guessing.

Q Were you aware of contacts with the Attorney General of the State of New York --

MR. SEIDMAN: I object to the form of the question.

THE COURT: I don't see what that has to do with the document.

MR. WILSON: That is who it is addressed to.

MR. SEIDMAN: Do you have any objection to it going into evidence?

MR. WILSON: No.

2pm

[Defendant Feinberg's Exhibit W received in evidence.]

MR. SEIDMAN: Your Honor, might I read this letter to the jury? It is a very brief letter.

THE COURT: You may.

[Mr. Seidman read from Defendant Feinberg's Exhibit W.]

Q Do you recall from whom you received Feinberg's Exhibit W, Mr. Feinberg?

A No. It probably came in the mail. Mrs. Flynn would have opened it.

JUROR NO. 4: Could I ask a question?

THE COURT: Yes.

JUROR NO. 4: Is that an original letter?

MR. SEIDMAN: No, it is a photocopy.

THE COURT: It is a photocopy.

JUROR NO. 4: Can I ask do you know for sure if that letter was sent out?

THE COURT: None of us in the room can answer that question.

JUROR NO. 4: One more question. I want to clear something in my mind.

THE COURT: Yes, sir.

JUROR NO. 4: Couldn't it be checked out with the Attorney General if they did receive such a letter?

THE COURT: I don't know whether it can or cannot. All I can tell you is that when the time comes you'll have to decide on the basis of evidence that is put before you and discuss such things among yourselves.

JUROR NO. 4: Yes, sir.

MR. WILSON: I'm advised that that letter was received by the Attorney General.

MR. SEIDMAN: Thank you, Mr. Wilson. I was about to write myself a note as to a subpoena.

THE COURT: All right, the jury understands and apparently it is agreed that the original of that letter

was received by the Attorney General.

MR. SEIDMAN: Thank you.

Q Did there come a time, Mr. Feinberg, that you received certain writings or letters or any other material from a company called Security Columbian Bank Note Company?

A Yes, I did.

MR. WILSON: Can we have an offer of proof on these documents?

THE COURT: All right. Just a moment, please. We will retire to our robing room.

[In the robing room:]

THE COURT: What is this line of inquiry?

MR. SEIDMAN: If you recall, there was a witness here, I believe, a Mr. Wesley. Mr. Wesley was an employee of the Security Columbian Bank Note Company. One of the issues involved in that and apparently a significant allegation in the case, was that the change of the bank was some type of clandestine impropriety and the issue, I believe, in part, is who caused that change.

THE COURT: You mean from the National Community Bank to the Chemical Bank as escrowee?

MR. SEIDMAN: That is right. There is an allegation by Mr. Wilson as to that.

THE COURT: What do you mean by "There is an

allegation"?

MR. SEIDMAN: The indictment is that the change in some way -- this was an overt act in this conspiracy, I believe.

MR. WILSON: Off the record.

[Discussion off the record.]

[In open court:]

THE COURT: All right, Mr. Seidman, we are all set.

Q Mr. Feinberg, I show you Government Exhibit No. 119 and ask you if you would tell us when you first saw that exhibit.

THE COURT: Is that the end of the question?

MR. SEIDMAN: Yes, sir.

THE COURT: Ladies and gentlemen, that is the so-called sticker, I think you know.

A We received two or three of them in the mail.

THE COURT: Who is "we"?

THE WITNESS: The company.

THE COURT: The question is when did you first --

THE WITNESS: That is when I saw it, when it came in.

Q Do you recall approximately when?

A March 1.

Q Can you tell me whether or not you were present at the time that Government Exhibit 119-A and 119 was either ordered or prepared at the Security Columbian Bank Note Company?

A No, I was not.

Q Can you tell us whether or not any proof of that exhibit was ever delivered to you, Mr. Feinberg, or at your company located in New Jersey?

A Never.

Q What, if anything, did Mr. Ezrine tell you about that sticker?

A The only thing about the sticker was he said that Carlton Cambridge and Netelkos, Gamarikian and Netelkos insisted upon it and that it was prepared.

THE COURT: Where did he tell you this?

THE WITNESS: I believe it was in his office.

THE COURT: And about when?

THE WITNESS: It would be within a day after I had received them in the mail.

THE COURT: Was there anyone else besides yourself and Mr. Ezrine?

THE WITNESS: Just his secretary.

Q At the time that you received this in the mail did you know whether or not this had been sent to any

Governmental agency?

A Say that again, please?

Q At the time that you received this sticker or stickers in the mail, did you know that they had been sent to any Governmental agency?

A I didn't know whether they had been and didn't know they had to be.

Q Mr. Feinberg, prior to December of 1969 did you know a man by the name of Robert Crespi?

A Yes, I did.

Q Can you tell us when you first met Mr. Crespi?

A In the late forties.

Q In the late forties? You mean the 1940's?

A Not age 40, no, '48, '49.

Q From time, from 1949 up to February 20, 1970, would you describe yourself as being a friend of his?

MR. WILSON: Objection.

Q What was your relationship with Mr. Crespi during this period of time, Mr. Feinberg?

A We went to each other's home. We socialized, went away together.

Q Did there come a time that Mr. Crespi met with Mr. Ivan Ezrine, if you know?

A Yes.

Q Could you tell us when that occurred, if you know?

A Well, I know it occurred in Mario's Restaurant on Route 4.

THE COURT: Were you there?

THE WITNESS: Yes.

THE COURT: When was that?

THE WITNESS: It would be in the early part of 1969.

Q Did a conversation take place at that meeting between yourself and Mr. Ezrine and Mr. Crespi?

A I'm sure we talked.

Q And did there come a time where the relationship --

MR. WILSON: Objection. What was said?

THE COURT: He is not asking.

MR. WILSON: I don't think he is leaving the meeting.

THE COURT: He is not asking anything further about the conversation. The question he is asking now may be a leading question, but it had nothing to do with the conversation.

Q Were there subsequent meetings between Mr. Crespi and Mr. Ezrine, if you know?

THE COURT: At which Mr. Feinberg was present?

MR. SEIDMAN: I haven't gotten to that point yet.

A By themselves? I don't know.

Q Were there subsequent meetings at which you were present when Mr. Ezrine and Mr. Crespi were present?

A Quite a few times.

Q Could you tell us, if you know, what business Mr. Crespi was in during 1969?

A He had a Peter Cooper-Stuyvesantown news route, and he had three or four beauty parlors.

Q And did the subject matter of Manor Nursing Center stock ever develop in any conversation which you were present with Mr. Ezrine and Mr. Crespi?

A We talked about it. All my friends knew about it.

Q Could you tell us, particularly with respect to when Mr. Ezrine and Mr. Crespi were present, whether you discussed the sale of Manor Nursing Center, Inc. stock?

A We probably did on some occasions, Mr. Seidman.

Q Did there come a time where a discussion ensued at which you were present concerning whether or not Mr. Crespi would receive any remuneration from the sale of --

MR. WILSON: Objection.

THE COURT: Yes. Just ask him what the discussions were, Mr. Seidman.

MR. WILSON: That he recalls at this time.

Q Can you tell us what the discussions were with respect to the --

THE COURT: The substance of the discussion.

Q -- the substance of it as between you, Mr. Ezrine and Mr. Crespi or between Mr. Crespi and Mr. Ezrine?

A In 1969 there was an underwriting called Capital City Nursing Centers. Mr. Crespi sold a good deal of that stock for Benjamin Werner, who had something to do with the underwriter by the name of Davis. I don't know what his official position was. He was promised --

THE COURT: Wait a minute. Don't tell us what he was promised because you don't know what he was promised.

Q Did Mr. Ezrine state anything to you or did Mr. Crespi state anything to you at those conversations --

MR. WILSON: I would like a place, who was present and what was said before each of them. This is important.

THE COURT: Let's get those details. When did this conversation take place?

Q When did this conversation take place, if you recall?

A The initial conversation at which Mr. Crespi agreed to sell some of his stock was sometime in the

mid-summer of 1969.

THE COURT: At which Mr. Crespi agreed to sell Manor Nursing stock?

THE WITNESS: No, Capital City's Nursing Center stock.

THE COURT: Were you in on this conversation?

THE WITNESS: No.

THE COURT: You say you had conversations and you were talking about a conversation between or with Mr. Crespi and Mr. Ezrine in which there were apparently references to the Capital Cities stock position and what had happened; is that right?

THE WITNESS: Yes.

THE COURT: When did that conversation in which you were engaged with them take place?

THE WITNESS: Well, over several occasions I heard from both of them.

THE COURT: When was that?

THE WITNESS: In the middle of the summer of 1969

THE COURT: In mid-summer of '69 you recall talking with Crespi and Ezrine about the Capital Cities proposition; is that right?

THE WITNESS: Yes.

THE COURT: All right. Now, was anybody there besides Crespi and Ezrine?

THE WITNESS: No.

THE COURT: When was this?

THE WITNESS: It was probably late June or early July of '69.

THE COURT: And where did it take place?

THE WITNESS: At Ivan Ezrine's office.

THE COURT: All right. And what was said? You can tell us what was said.

THE WITNESS: Ivan Ezrine said that if Bob Crespi could sell some of the stock, that he would be paid for selling it.

THE COURT: If he could sell some of the Manor Nursing stock?

THE WITNESS: No. Capital Cities.

THE COURT: And you were involved in the discussion about Capital Cities, or you were there listening?

THE WITNESS: I was there.

THE COURT: All right. And Ezrine said to Crespi

that -- what?

THE WITNESS: That if he could sell some of the stock he would be paid for it. I don't remember how many cents per share.

THE COURT: All right. That was Capital Cities stock.

THE WITNESS: That was Capital Cities stock.

THE COURT: All right. Go ahead, Mr. Seidman. Well, let's finish the conversation on that occasion.

BY MR. SEIDMAN:

Q Will you tell us what Mr. Ezrine said, if anything, thereafter, and what you said?

MR. WILSON: At that meeting?

MR. SEIDMAN: At that meeting, obviously.

A Mr. Crespi said he would sell some of the stock.

Q And do you know what a finder's fee is, Mr. Feinberg?

A In securities or in real estate?

Q In securities.

A Somebody who gets paid for bringing people together.

Q And --

A Or doing something that somebody makes money on.

Q And were there then subsequent meetings at which you were present with Mr. Crespi and Mr. Ezrine?

A Apropos of this subject?

THE COURT: Well, Mr. Seidman didn't say apropos of this subject. I don't know whether he means that or not.

Q Apropos of this subject or any other subject. Just tell the conversation, Mr. Feinberg.

THE COURT: First tell us if there was such a meeting.

Q (Continuing) Right.

A I was at the first meeting, where he asked if we could --

THE COURT: We understand that.

Q Now, was there another meeting?

A I don't recall another meeting.

Q Did there come a time that you read this prospectus concerning Manor Nursing Centers, Inc.?

A Yes; I read it.

Q And with respect to that, did you happen to notice the name of Robert Crespi thereon?

A Yes.

Q And did the prospectus, which I believe is Government Exhibit 11 --

MR. SEIDMAN: Where is it?

MR. WILSON: Do you need a copy?

MR. SEIDMAN: No.

Q (Continuing) Did that prospectus disclose the fact

that with respect to the Manor Nursing Centers --

THE COURT: It either did or it didn't, Mr. Seidman.

MR. SEIDMAN: Yes.

Q I show you what is Government's Exhibit 11, as Mr. Wilson has handed it to me, and ask you whether or not you were aware of the fact that Mr. Crespi was going to receive a $25,000 fee, which was disclosed in that prospectus.

A I definitely was aware of it.

THE COURT: You were aware of it first when?

THE WITNESS: Bob Crespi --

THE COURT: Just give me a date.

THE WITNESS: A date?

THE COURT: An approximate date. Before you read the prospectus or after or --

THE WITNESS: Oh, no. I knew it before it was printed.

THE COURT: All right. That's all I wanted to know on that point.

Q Could you approximate a date, if you don't have a specific date?

A September or October of 1969.

Q And was that disclosed to the Securities & Exchange Commission, if you know, on the S-1 that was filed with it?

THE COURT: Sustained. If it's there, read it.

MR. WILSON: The one filed on June 30, '69 contains his name.

MR. SEIDMAN: And will Mr. Wilson stipulate that it was disclosed that there was to be $25,000 --

MR. WILSON: It says that. Mr. Crespi testified about it.

Q Now, what if any conversation did you hear or did you partake in concerning the receipt by Mr. Crespi of the $25,000 fee, as disclosed in the prospectus?

A Mr. Ezrine said that Mr. Werner owed twenty-five -- twenty-some-odd thousand dollars to Mr. Crespi, and he was going to name him as a finder, and he said, "It doesn't affect you at all, because it comes out of the underwriter's own money."

THE COURT: He said that to whom?

THE WITNESS: To me.

Q And by the underwriter's own money, whom did you understand that to mean?

A Mr. Werner's. He said it didn't affect anybody or the company.

THE COURT: Except Mr. Werner, I take it?

THE WITNESS: That's right. It only affected Mr. Werner.

THE COURT: When did Mr. Ezrine tell this to you?

THE WITNESS: I was guessing: some time into June.

THE COURT: And where?

THE WITNESS: Well, if it wasn't in Mr. Ezrine's office, it was in my home, on a week end.

THE COURT: All right. And was anybody else present, that you recall?

THE WITNESS: A lot of people there, but --

THE COURT: Was anybody else involved in the conversation?

THE WITNESS: No.

Q Did there come a time that you had any meeting or conversation with Mr. Crespi after the closing of the underwriting, on February --

THE COURT: 20th.

Q (Continuing) -- 20th of 1970?

A I went to his house that week. He had just suffered a stroke.

Q And could you tell us what he said to you and what you said to him?

A Well, I went there with, really with two purposes in mind. I brought the physical therapist there from Tenafly to see if he could help him, and I also left him some money.

Q And could you tell us what if any other conversation took place concerning any other aspect of Manor Nursing

Centers stock at that time? 533a

A The man was sick. He had just suffered a stroke.

THE COURT: If no other conversation occurred, ju[illegible] say so, please.

THE WITNESS: Nothing about Manor.

Q Did you at any time request of Mr. Crespi that he turn over to you any portion of the $25,000 that was to be hi[illegible] as disclosed in the prospectus, Mr. Feinberg?

A Conversely --

THE COURT: Just yes or no.

Q Yes or no?

A No; I did not.

Q And did there come a time that you were made aware that Mr. Ezrine had requested certain moneys from Mr. Crespi with respect to that $25,000?

MR. WILSON: Your Honor --

THE COURT: Sustained.

MR. WILSON: Your Honor, it's impossible --

THE COURT: I said, sustained.

Q Do you recall any other conversations with Mr. Crespi?

THE COURT: On any subject in the world?

Q (Continuing) -- concerning the $25,000 finder's fee, as disclosed in the prospectus?

MR. WILSON: Your Honor, I think that if Mr. Seidman wants to elicit this testimony, it goes to the veracity of Robert Crespi on the stand.

THE COURT: It does not unless it is inconsistent with what he said on the stand.

MR. WILSON: It is inconsistent.

MR. SEIDMAN: I don't know if it is or is not.

MR. WILSON: I guess the fact that I want it in --

MR. SEIDMAN: In any event, I am being safe.

THE COURT: All right.

MR. SEIDMAN: I may withdraw the question by the time I reach the courtroom.

(In open court:)

THE COURT: I think you have time for about one more question, Mr. Seidman.

BY MR. SEIDMAN:

Q Mr. Feinberg, did you ever, at any time, request of Mr. Crespi any money with respect to the $25,000 that it was disclosed he was to receive in the Manor Nursing Centers, Inc.?

A I did not.

MR. SEIDMAN: Is the day over?

THE COURT: The day is over for you. It is not over for me.

MR. SEIDMAN: It was over for me a long time ago.

THE COURT: I wish it were over for me.

Ladies and gentlemen, as you know, we won't meet any further this week. We will, however, resume at the regular time on Monday morning, at ten-fifteen.

(The jury left the courtroom.)

MR. WILSON: The Government would request some kind of report on Mr. Feinberg's health at this time.

THE COURT: Is there anything that ought to be reported to me about your health? I am not trying to elicit any adverse comment. I just want to know how you are.

DEFENDANT FEINBERG: Now?

THE COURT: Yes.

DEFENDANT FEINBERG: Getting better.

THE COURT: Good. I hope you rest well between now and Monday. Don't eat too much on Thanksgiving.

Are you going to stay in this area for the holiday?

DEFENDANT FEINBERG: I can't travel. I'm not even talking about the court. I am saying, the doctor will not let me travel.

MR. SEIDMAN: I made clear to Mr. Feinberg that he could not leave the New Jersey-New York area without first consulting with the court.

THE COURT: I can understand that, and if his healt

were to permit it, I might permit it, but it is academic now.

(Adjourned to December 2, 1974 at 10:15 a.m.)

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UNITED STATES OF AMERICA,

- v s - 73 Cr. 464

IRA FEINBERG and JOSEPH DELMONICO.

December 2, 1974

[10:30 a.m.]

- - -

[Trial resumed; jury present.]

I R A F E I N B E R G , the defendant, having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION

BY MR. SEIDMAN: [continued]

Q Mr. Feinberg, when we left off on Tuesday afternoon, I believe it was, I believe we were at the point where you had received or Mr. Weinder's office, the accountant had received a letter from the Swiss bank indicating there was no Swiss bank account. Could you tell us the approximate date on which that letter was received, if you recall?

THE COURT: Actually it was received by your accountant, was it not?

MR. SEIDMAN: Yes. I think I said that.

THE COURT: Do you mean when it was received by

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the accountant or when Mr. Feinberg was advised of it?

Q Can you recall the date on which your accountant received that letter?

A It seems like it was very early in December.

Q Of what year?

A 1970.

Q After the receipt of that letter, can you tell us what if anything else you did with respect to the Swiss bank account that Netelkos had indicated existed in Switzerland?

A We spoke to Mr. Netelkos about it.

Q Speak up.

A We spoke to Mr. Netelkos about it.

Q When you say "we", will you please state what you said --

THE COURT: Mr. Seidman is asking you what you did.

Q Did you speak to Mr. Netelkos?

A Yes.

Q What did you say to him and what did he say to you with respect to that letter?

A When I informed him what the bank had said, he said, "That is impossible;" that it had something to do with the fact that we didn't sign a signature card for some kind

of a nom de plume account.

Q Did you say anything else to him or did you do anything else with respect to that Swiss account at or about that time?

A He told me that he would get it squared away and that he would get -- whether he used the word confirmation or verification -- they are both the same -- for us.

Q Did there come a time when you received such a confirmation?

A No, sir.

Q What, if anything else, did you do after you did not receive that confirmation?

A I spoke to Mr. Weiner.

THE COURT: Let's have some dates.

By when did you consider you didn't have a confirmation? How long did you wait for a confirmation?

THE WITNESS: All this took place in the second half of November, about the first couple of days in December. I can't pin each action down.

THE COURT: Did you just wait a few days after you spoke to Mr. Netelkos?

THE WITNESS: No. After I spoke to Mr. Netelkos I called Seymour Weiner up and told him what he had said.

Q At that time who was your attorney, if you recall?

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A Well, Mr. Ezrine was our SEC attorney and Mr. Beckerman was still our general attorney.

Q Had you gone to any other attorney?

A That is what happened. I called Mr. Weiner and told him what Netelkos had said and he said, "You know, maybe we ought to sit down with a new attorney and get some information with somebody who doesn't know the first thing about it."

He recommended an attorney by the name of Lawson Bernstin whose office was on -- I don't know if the mailing address is 58th Street or 59th Street. It is a through and through building. We went up to see Mr. Bernstein.

Q After you went to see Mr. Bernstein, your new attorney, what did you then do with respect to the Swiss bank account in the early part of December, 1970?

A We did nothing in December. It seems to me we went to Switzerland in January.

Q When did you make arrangements to go to Switzerland?

A Late in December or early in January.

Q Can you tell us if you had any other conversations with Mr. Netelkos during that period of time?

A There was a conversation after the original one in which he once again maintained that this was not a fact.

Q What was not a fact?

A That there was no account. And that he would get it all straightened out and, in fact, he was going to accompany Mr. Weiner, Mr. Beckerman and I to Switzerland.

Q Did there come a time that you made arrangements to go to Switzerland?

A Yes.

Q Could you tell us when and with whom and the approximate time that you went to Switzerland?

A Well, we made arrangements through a travel agent for four tickets on a TWA flight from Kennedy Airport, non-stop to Geneva for Mr. Beckerman, Mr. Weiner, Mr. Netelkos and myself for reasonably early in January. The 10th, something like that.

Q Did there come a time that you, Ira Feinberg, did in fact go to Switzerland pursuant to these arrangements?

A I went with Mr. Beckerman and Mr. Weiner.

Q Did Mr. Netelkos accompany you?

A No, he did not.

Q Did Mr. Netelkos state anything to you as to why he could not accompany you?

A No. When the three of us got to the TWA --

Q When you say "the three of us", would you use names and not pronouns?

A Mr. Weiner, Mr. Beckerman and myself.

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Q Go ahead.

A When we got to the TWA terminal I was paged and it was Mr. Bernstein on the phone who said that Mr. Netelkos had called my home and my wife called him because she didn't know how to get in touch with me -- that he was unable to make the flight. So I called my home.

Q Can you tell us for what purpose, you, Ira Feinberg, was going to Switzerland?

A We were supposed to have six hundred some-odd thousand dollars there with a lot of interest. And, then, all of a sudden, they tell us they don't know who we are.

Q Who is "they"?

A The Swiss bank.

Q Did you in fact go to Switzerland?

A Yes, we did.

Q Can you tell us who went with you?

A Mr. Beckerman, Mr. Weiner and I.

THE COURT: We know this. You said so.

A [continuing] The only thing that is omitted here is that when I called home there was a name and a telephone number, BAL something.

THE COURT: Those three letters?

THE WITNESS: That is in Paris. It was, I think, at the Prince DeGaulle Hotel in Paris that I was supposed to

call. When I got there --

Q Who left that message there for you?

A Mr. Netelkos left this message with my wife.

Q Did there come a time that you either arrived in Paris or Geneva?

A Our flight was forced down in Paris at Orly Field. That was the worst snowstorm they had ever had. When we were in Paris I called this telephone number from the TWA Ambassador Lounge and I spoke to a Mr. Gravis, a Robert Gravis, who said that he had --

MR. WILSON: Objection, your Honor.

Q Will you tell us what you said to him, Mr. Feinberg?

THE COURT: Tell us what you said to him.

A I said, "My name is Ira Feinberg. I'm over here and I'm in Paris at the airport at the TWA lounge. Mr. Christos Netelkos left this telephone number and your name for me to call you because he said that you would handle the entire transaction of straightening out Swiss bank account."

Q And did there come a time that you met this Mr. Gravis?

A We were stuck in Paris for about six hours -- four hours, six hours. We then flew into Geneva --

THE COURT: The question is whether you ever met Mr. Gavis.

THE WITNESS: Yes, that night.

Q Where did you meet him?

A In the Intercontinental Hotel.

THE COURT: In which city?

THE WITNESS: In Geneva, Switzerland.

Q So therefore you went from Paris, after being forced down because of snow, to Geneva, is that correct?

A Yes, sir.

Q However, you had made the phone call from Paris to Geneva?

A From Orly Airport to I think the Prince De Gaulle Hotel.

THE COURT: In Geneva?

THE WITNESS: No. In Paris.

THE COURT: That's what I thought.

THE WITNESS: Yes. The hotel is in Paris, and I called the telephone number. BAL -- something.

Q Now, did there come a time that Mr. Gravis

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called upon you, either by telephone or in person?

A Yes. He called that night and said he was at the Geneva Airport and that he would meet me at the hotel. He just had to get a cab and come up. I guess the hotel was 10, 15 minutes away from the airport, if I remember correctly.

THE COURT: And you did meet, is that right?

THE WITNESS: We did meet, in the hotel, in my room.

Q Will you tell us what you said to Mr. Gravis?

MR. WILSON: May we find out who else was there?

THE WITNESS: There was nobody else there. It was in my room.

Q Will you tell us what you said to Mr.Gravis?

A Well, he spoke to me first.

Q Fine. And what is --

A Based upon --

THE COURT: Don't tell us what he said. That would be hearsay.

Q Yes, under the rules, you can't tell us that.

THE COURT: You can tell us what he did.

Q Just tell us what you said to him.

A I said I was there for the money.

Q Whose money?

A The company's money. Manor Nursing Centres.

Q And what else did you say to him?

THE COURT: I assume that was the substance of your message.

THE WITNESS: That was the entire conversation, was in reference to this and apparently -- well, I can't tell you what he said.

MR. WILSON: Your Honor, I have no objection to hearing what Mr. Feinberg says this man Gravis said to him.

THE COURT: You did a short while ago.

MR. WILSON: I withdraw all objections.

MR. SEIDMAN: Mr. Gravis was a man who was mentioned by Mr. Netelkos previously.

THE COURT: Well, I don't know that that would cast any light on anything, but as long as Mr. Wilson withdraws his objection, let's get the whole conversation. What he says.

THE WITNESS: He came in the room and said he had received instructions from Mr. Netelkos via transatlantic telephone to straighten out our problem with the bank in Geneva, and he then started to talk to me about certificates of deposit. He had a briefcase with him with all kinds of forms, and he wanted to know about certificates

of deposit and did we want to block the account, what was the purpose?

I said to him, "I don't know what you are talking about. If we can just get our money" -- and he said, "Do you really believe there is money in the bank?"

And I said, "Well, that is what we are here for."

I said, "Do you know what? Do me a favor. In the next room is my auditor and in the room after is my accountant. Would you just wait here a minute, and maybe we can make some heads or tails of what you are talking about."

He says, "Do you mean you brought over a lawyer and an accountant?"

I said, "Yes."

He took his coat, threw it over his arm, took his hat and walked out of the room.

Q After that meeting, could you tell us what you did in order to determine whether or not the Swiss bank account existed?

A The next morning we went to the bank.

Q Who went to the bank?

A Mr. Beckerman, Mr. Weiner and I went to the bank and --

Q There is the bank --

A To the address that was on the stationery and found we had to walk three miles because we couldn't get a cab, because that was the wrong address.

Q And that bank was in Geneva, Switzerland?

A But it was in Geneva, yes.

Q When you got to the bank with Mr. Weiner and Mr. Beckerman in Geneva, Switzerland, could you tell us whom you saw there?

A We saw some man from the bookkeeping department and then a Mr. Jacques Hassan.

Q And could you tell us what you said to Mr. Hassan with respect to this account?

A Well, when we got to speak to Mr. Hassan, he had already had copies of all of these papers that had been sent over by Mr. Weiner.

Q Correct.

A And he said that --

MR. WILSON: Objection.

THE COURT: All right. I'm sorry. You can't tell us what he said, but you can tell us what you said.

THE WITNESS: He did all the talking.

MR. WILSON: Your Honor, the point of this is is that there was no bank account.

THE COURT: Mr. Wilson, they are entitled to bring

out their story. There is more to it than the question of whether there was a bank account. The question is whose version of this story is the jury to believe. Just object --

MR. WILSON: I object to a conversation with a person who is not here.

THE COURT: Tell us which rule you want to invoke. You are perfectly within your rights to do that.

Go ahead, Mr. Seidman.

Q Mr. Weiner and Mr. Beckerman were with you in Geneva, Switzerland, at the bank, when you spoke to Mr. Hassan?

A Yes.

Q And at that time you were seeking --

A We all spoke to Mr. Hassan.

Q You all spoke to Mr. Hassan?

A That is correct.

Q And when you left Switzerland, can you tell us whether or not you had with you this account or the proceeds of this account that Mr. Netelkos had indicated to you existed in Switzerland?

A We had absolutely nothing.

Q Did you then -- what did you then do, Mr. Feinberg?

A You mean that day?

Q That day, right.

A Took a plane back to New York.

Q You went back to New York.

Pardon me.

A We took a plane, a Swissair plane, back to New York, instead of TWA, the next flight.

Q Mr. Feinberg, can you tell us whether or not Mr. Beckerman, who accompanied you to Switzerland, is an attorney licensed to practice law in the State of New Jersey?

A Yes.

Q Can you tell us whether or not Mr. Seymour Weiner, who accompanied you to Switzerland, is a certified public accountant licensed to practice in the State of New Jersey?

A Yes.

Q Or the State of New York?

A I don't know about New York, but I guess he is licensed in New Jersey. That is where his office is.

Q Did you return to the United States?

THE COURT: He said he did, yes.

Q Did you thereafter have any conversation with Christos Netelkos?

A Yes, we did -- I did.

Q Will you tell us when, if you recall?

A Starting with that night, until he had his phone

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changed.

THE COURT: Well, how often is that?

THE WITNESS: Called him 20 times a day until he in desperation took his phone off the hook, and then we sent a taxicab down to tell him to hang up his phone. And then he had his telephone changed to an unlisted number.

Q. When did you ever have an opportunity to speak to Mr. Netelkos after you returned from Switzerland whereby you entered into a conversation with him concerning the fact that there was no Swiss bank account, as determined by you?

A We told him that there was none, when I did speak to him. As long as he was on the phone we wanted to know what he was going to do about the money.

Q What did he say?

A He maintained that he didn't know what he was talking about and the bank had the money over there and Mr. Gravis goofed up the deal and this kind of stuff, but we still couldn't get a quarter from anybody, no matter what he said.

Q Could you approximate the time or date, rather, that you returned from Switzerland after determining that the Swiss bank account didn't exist?

A We got there on day one, went to the bank on day two

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and I believe we left on day two.

Q Do you know what date of the month of January that was, if you can give us an approximation?

THE COURT: I should think counsel ought to be able to agree on that, can't they?

A Whatever date the ticket says. Not quite the middle of the month.

MR. SEIDMAN: Do we have anything on that? I will try to get it.

THE COURT: Is it significant?

MR. SEIDMAN: Well, it may be. I just wanted to pinpoint the time.

Q Now, after you returned from Switzerland, did you thereafter meet with Mr. Lawson Bernstein, your new attorney?

A Yes, we did.

Q And did you inform him of your discovery of the non-existence of the Swiss bank account in Switzerland?

A Yes, we did.

MR. WILSON: Who is this "we", your Honor?

THE WITNESS: I did.

Q Was Mr. Weiner with you at many times --

A Most every time I went he was with me.

Q And was Mr. Weiner with you at the times when

you normally met with Mr. Bernstein?

A In the beginning he was, yes.

Q Did you disclose these facts of the non-existence of the Swiss account to Mr. Bernstein?

THE COURT: You just asked him that two minutes ago and he said yes.

Q Can you tell us whether or not you caused --

THE COURT: Show him something and ask him about it, if you want to.

Q Did you cause --

THE COURT: What document are you referring to?

MR. SEIDMAN: Feinberg Exhibit N, your Honor.

THE COURT: Is it in evidence?

MR. SEIDMAN: Yes.

THE COURT: Do you want to ask him if he had something to do --

Q Did you help in the preparation of Feinberg Exhibit N with Mr. Bernstein and Mr. Weiner?

A Well, Mr. Weiner did the accounting parts of it. Mr. Bernstein did the legal parts of it, and I filled in whatever I knew about the transactions.

THE COURT: Is this the 10-K?

MR. SEIDMAN: Yes, your Honor.

A When we got back he said we had to notify the SEC and it is done in a formal manner by the filing

of this document.

THE COURT: Mr. Bernstein said that?

THE WITNESS: Yes.

Q And did you in fact sign Feinberg Exhibit N which disclosed those facts?

A You want to know if that is my signature?

Q Yes.

THE COURT: Let's leave the "which disclosed those facts"and leave it to the jury to determine.

MR. SEIDMAN: I have read this to the jury, your Honor --

THE COURT: I thought so.

MR. SEIDMAN: I just wish to ask them to -- I would ask the jury, if it deems it important, to consider --

THE COURT: Why don't you just say, "The material I am referring to is on such and such pages."

MR. SEIDMAN: Beginning at page F-6 through and including F-11.

THE COURT: The material relates to the Swiss bank account.

MR. SEIDMAN: And other disclosures made by the witness with respect to the happenings of this --

THE COURT: Period?

MR. SEIDMAN: Period.

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THE COURT: All right.

Q Mr. Feinberg, did there come a time that you were requested to testify before the Securities and Exchange Commission with respect to the Manor Nursing Centres, Inc. public offering?

A Yes.

Q And did you in fact so testify?

A Yes.

Q Were you under oath at that time?

A Yes, I was.

Q And did you testify sometime in the year 1971?

THE COURT: Why don't we agree on when it was?

THE WITNESS: February 12th, Mr. Seidman. It was Lincoln's Birthday.

THE COURT: On that day only? It was only one day?

THE WITNESS: I spent the entire day with them.

Q Mr. Feinberg, did there come a time in 1971 when the Securities and Exchange Commission commenced a lawsuit involving the public offering of Manor Nursing Centres, Inc. stock?

A Yes.

Q Did you in fact testify under oath in that proceeding?

A Yes, I did.

Q Did there come a time that you were requested by Mr. Wilson to appear and testify before a grand jury concerning the Manor Nursing Centres, Inc. stock?

A No.

Q Pardon me?

A Mr. Wilson never requested that I come to the grand jury. I called and asked if I could please come.

Q And did you so testify?

A Yes. Five or six times.

Q And prior to testifying before the grand jury did Mr. Wilson advise you that anything you said might be used against you?

A Yes, he did.

Q Prior to testifying before the Securities and Exchange Commission, did Mr. Wilson -- did the Securities and Exchange Commission ever inform you that anthing you said might be used against you?

A Yes, they did.

Q In words or substance. And therefore you testified three times under oath before the Securities and Exchange Commission --

A No, once.

Q Pardon me. Three different bodies. I meant,

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but I will withdraw that question.

When you testified, in 1971, in February, before the Securities and Exchange Commission did you in essence disclose the facts that --

MR. WILSON: Objection.

THE COURT: Mr. Seidman, I think the testimony speaks for itself.

MR. SEIDMAN: Very well, your Honor.

THE COURT: If you want to put any of it in this record I can't see any problem about doing that.

MR. WILSON: I'm not sure, your Honor, I don't think the prior testimony is admissible here. Mr. Feinberg has testified here as to the facts.

THE COURT: Well, I will consider the question. There are circumstances under which it might be.

MR. SEIDMAN: I believe it would go to his --

THE COURT: Let's not argue before the jury. I will speak to you about it at the break.

MR. SEIDMAN: And if your Honor pleases, another aspect that we have to take up --

THE COURT: Whatever we have to take up I will be glad to take up during the recess.

Q If you know, Mr. Feinberg, could you tell us whether or not in 1971 Christos Netelkos testified before the

Securities and Exchange Commission --

MR. WILSON: Objection.

Q -- concerning this matter.

THE COURT: I don't see anything objectionable about it.

MR. WILSON: I don't see any relevance to it. I think the witness has --

THE COURT: What is the relevance?

MR. WILSON: Mr. Netelkos testified about that.

THE COURT: What is the relevance of whether he testified or not?

MR. SEIDMAN: If your Honor please, I think it is important from the standpoint of when certain witnesses are testifying.

THE COURT: Well, if the SEC didn't call a witness he wouldn't have testified. I will sustain the objection. You were free to ask Mr. Netelkos, when he was on the stand.

MR. SEIDMAN: I believe I did bring that out.

THE COURT: Then why bring it out again?

MR. SEIDMAN: By way of comparison.

THE COURT: But that is not proper. You can do that when you sum up.

MR. SEIDMAN: If your Honor please, I am about to embark on an area of questioning that is different.

May we approach the bench?

(In the robing room.)

MR. SEIDMAN: If your Honor please, at this point I intend to get into the area of restitution, and your Honor had asked me, I believe, that prior to my doing so, you asked me to bring it to your attention.

THE COURT: So I could instruct the jury.

MR. SEIDMAN: If you wished.

THE COURT: Yes. I will instruct the jury that it is solely for that determining that Mr. Feinberg's intent they are free to consider this material, but it is not a defense to make restitution.

MR. WILSON: And of course it is clear to Mr. Seidman, and I take it it is your Honor's ruling, that I can explore in depth all of the facets of this so-called restitution?

THE COURT: Certainly. I went so far as to tell Mr. Seidman in an earlier conference that I wondered whether he was wise to go into this subject. But that is for him to determine.

(In open court.)

THE COURT: Ladies and gentlemen, Mr. Seidman is going to ask Mr. Feinberg some questions, I understand, about whether any of the monies were paid back to people

who subscribed to the stock of Manor Nursing.

I want to try and make this very clear. It is absolutely no defense to the criminal charge here to pay back the money in question. One can't defraud somebody else -- and I am not trying to decide this case, but I am saying, should you determine that there was a fraud committed here in accordance with the instructions I will later give you, it is no defense that the person who committed the fraud later paid back the money. You understand that?

However, I will allow Mr. Seidman to ask Mr. Feinberg questions on this subject, because in determining in your own mind whether a fraud occurred, you must determine, of course, that Mr. Feinberg -- and we are principally dealing with Mr. Feinberg on this point -- intended to defraud the people in question, and in connection with determining what Mr. Feinberg's interpretation was, you may feel that it is relevant that some monies were, if he so testifies later, repaid.

Do you understand that? It is for that sole reason and that reason only, that you can consider this testimony. You can't say to yourself, "I find that monies were paid back and therefore there is no guilt."

You can say to yourself, if you so conclude, "I find that monies were paid back and this has a certain

effect on my attitude towards what Mr. Feinberg's intention was."

Q Mr. Feinberg, is it correct to state that it was intended that the public offering --

THE COURT: I am skeptical of questions that start out that way, Mr. Seidman. Let me hear the question.

MR. SEIDMAN: Your Honor's skepticism may be well placed, but if you will permit me to finish the question.

THE COURT: Finish the question.

MR. SEIDMAN: I just want to bring, hopefully, some logic to my sequent question.

Q Is it correct to state, Mr. Feinberg, that it was intended to raise the sum of four and a half million dollars by the Manor Nursing Centres, Inc. public offering?

A Yes.

Q Is it correct to state that it was intended that three and a half million --

THE COURT: I think the phrase, "It was intended" is vague here. We are dealing with the intentions of particular people. If you want to ask Mr. Feinberg what his intention was, he can tell you.

MR. SEIDMAN: Very well, your Honor.

Q Was it your intention, Mr. Feinberg, by the

public offering of Manor Nursing Centres, Inc. stock, to raise four and a half million dollars?

A Yes, it was.

Q Was it your intention, Mr. Feinberg, that three and a half million dollars of that public offering was to go directly to Manor Nursing Centres, Inc., the company?

A After the expenses, yes.

Q And is it correct to state, Mr. Feinberg, that the balance of the proceeds of the public offering was to be distributed, as disclosed in the prospectus, to certain selling stockholders, one of which is you?

A Yes, sir.

Also less the expenses.

Q And by expenses, you mean the expenses of the underwriting, is that correct?

A What the underwriter charged us, what his expenses were, the legal fees --

THE COURT: All the expenses set forth in the prospectus.

THE WITNESS: Yes.

Q Can you tell us in your own words, Mr. Feinberg -- and explain to the jury, if you would -- what proceeds were obtained in the Manor Nursing Centres, Inc. public offering, as determined as of the time of your return from

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Switzerland in January of 1971?

A I'm not sure -- will you say that again, please?

Q Would you tell us, Mr. Feinberg, what proceeds were actually received by either the stockholders or the company?

THE COURT: As of January 1971.

Q -- as of January, 1971.

THE COURT: From the issue.

A Well, the company got $600,000 from Daytona Beach. We got about I guess about seven or eight hundred thousand dollars in addition to that from various sources.

THE COURT: From other sources, is that so, is that right?

THE WITNESS: Other than Daytona Beach.

THE COURT: So by that time the company had received something like a million three or a million four?

THE WITNESS: That is all we had that was good money at that point.

Q And will you state that the company didn't at any time receive, as a result of the bounced checks, the failure of the Swiss bank account, any other proceeds from the public?

MR. WILSON: I'm not sure what that means.

THE COURT: I'm not sure that it is important whether you are sure, but I don't know that the witness

can be sure, either. If that is what they received, that is what they received. You are taking all sources into account, I take it, Mr. Feinberg, when you say that, is that right?

THE WITNESS: I'm sorry, sir --

THE COURT: When you mention the six hundred plus to seven to eight hundred, totalling a million three or four, are you taking into account all sources?

THE WITNESS: That we got money from the public, yes.

THE COURT: I am talking about the company only.

THE WITNESS: That includes everybody.

MR. SEIDMAN: I am talking about the stock-holders.

THE COURT: Then I think it might be wise to break it down.

MR. SEIDMAN: Fine.

Q Now, Mr. Feinberg, you mentioned Daytona Beach. Would you give us the full name of Daytona Beach, if you know it?

A Daytona Beach General Hospital.

Q And did there come a time when you were informed by someone of the name Daytona Beach General Hospital?

A You mean the first time I ever heard the name?

Q Yes, were you informed by someone?

A Yes.

Q Can you tell us who that person was that informed you of that name?

A Ivan Ezrine.

Q Prior to Ivan Ezrine ever mentioning Daytona Beach Hospital to you as the purchaser of the stock, had you ever heard of that name?

A I never heard of Daytona Beach General Hospital, but I heard of it before they bought the stock.

Q From who did you hear of it?

A From Ivan Ezrine.

THE COURT: Before Ezrine told you about it, you never heard it?

THE WITNESS: That is correct.

Q Did you in any way negotiate directly with any of the principals of Daytona Beach Hospital the sale of Manor Nursing Centers stock to that entity?

A Not at all.

Q Now, you have told us, Mr. Feinberg, that it was intended by you to raise $4,500,000 by the public offering; is that correct?

A Yes.

Q And you informed us that the maximum amount of money that was received in total was approximately $1,300,000 or $1,400,000; is that correct?

A Some place in between, yes.

Q Can you tell us whether there came a time when an arrangement was made with Daytona Beach General Hospital to return the $600,000 that it had paid for the Manor Nursing Center stock to that entity?

A Yes. I think they were paid in September of 1973 a portion of it and then Mr. Lobell, who is the trustee appointed by Judge Motley, then paid them some more, but I

don't believe they got their full $600,000 back. They got about $500,000, something like that.

Q And at that time, can you tell us whether or not with respect to the return of that portion of the money to Daytona Beach General Hospital, who the attorneys were in the negotiation of that transaction?

MR. WILSON: I object.

THE COURT: Sustained.

Q Was Mr. Ezrine a party to the negotiation of the return of the money to Daytona Beach General Hospital?

A Absolutely not.

Q Were you, Ira Feinberg, a part of the negotiation?

MR. WILSON: Between whom and whom, your Honor?

MR. SEIDMAN: You didn't permit me to bring that out.

MR. WILSON: Just ask who did it.

THE COURT: This is all a matter of record, but aside from its being a matter of record, you are asking last questions first. If you want the jury to consider this material, then ask him how the payments came about and let him tell.

MR. SEIDMAN: Very well, your Honor.

Q Can you tell us how the payments came about, Mr. Feinberg, to the Daytona Beach General Hospital?

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Centers.

Q Of the nursing home?

A Yes.

Q Did you continue to operate the nursing home during this period of time and up to the present date hereof?

A Yes, I did.

Q Mr. Feinberg, did there come a time that you made certain payments of monies by way of restitution or return of monies with respect to the Manor Nursing Centers, Inc. public offering to any individual?

THE COURT: We are talking about you personally, Mr. Feinberg.

THE WITNESS: Yes. I turned over assets to the trustee, money, stock, land. When the stock and the land were sold, plus the money I gave him, it came to about $400,000.

Q And is it correct to state also that at the time that you turned over to him $400,000 that although you worked as an employee of Manor Nursing Center, Inc. you were no longer the owner of that nursing center?

A Well, the receiver owned it.

Q Do you presently own that nursing center?

A No, I don't.

Q However, you were employed there; is that correct?

A That is correct.

Q At the time the public offering took place, was the company, Manor Nursing Centers, Inc. the owner of the parcel of land in Emerson, New Jersey?

A Yes.

Q And from the date of the public offering or the closing of the public offering has there been built on the Emerson, New Jersey property a facility intended for the use of a nursing home?

A Yes. It will be opened the first week of January, 1975 for patients.

Q Prior to going public, were you or the corporation that you owned the owner of that Emerson Nursing Center property?

A I had a deposit on the land.

Q And to date, are you the owner of the facility in Emerson, New Jersey?

A No, I'm not.

Q From the time of the public offering up to the present date hereof did you arrange and manage the construction of the facility in Emerson, New Jersey?

MR. WILSON: Objection.

THE COURT: Sustained. I really don't see what this has got to do with the case.

Q However, you are no longer the owner?

MR. WILSON: Objection.

THE COURT: He just finished answering the question.

Q Can you tell us what the equity value, based on the fair market value there was attributed to the Manor of Tenafly Nursing Center, which was an asset you contributed --

MR. WILSON: Objection.

THE COURT: I don't understand your need to go over this. I take it this was one of the items that Mr. Feinberg contributed to the trustee. Is that correct, Mr. Feinberg?

THE WITNESS: No.

MR. SEIDMAN: To the receiver.

THE WITNESS: Yes, sir.

THE COURT: In accordance with our discussion in the robing room and my ruling, I said you were free to ask Mr. Feinberg what he paid in restitution here. He made that clear that he gave money, stock and land valued at $400,000, and I see no reason for us to break down items and repeat them.

MR. SEIDMAN: Except I seek to bring out that in addition to that $400,000 he had already contributed

the nursing home money and any other property and any other assets.

MR. WILSON: Objection.

THE COURT: That is not one of the items that I considered appropriate for you to go into. I'm telling the jury that they can disregard that.

The items I am willing to allow them to consider are the items of restitution that I explained for the jury earlier.

Q In addition to the $400,000 some-odd that you turned over to the trustee, Mr. Feinberg, had you been prior thereto --

THE COURT: Personally?

Q -- personally done anything to start the purchasing from the public of the stock they had bought at the public offering?

A Yes, I had made arrangements with a Mr. George Quinn for people who had some of those -- people he had sold stock to, to give them credit on their deposits against houses that they bought or land that they bought, to give others deeds on property and some people were paid back in cash besides.

Q Would you estimate the value or dollar amount of those monies returned to investors prior to the appointment

of the trustee?

A I can only answer that in reverse. In other words, when the trustee came into the picture there was only $287,000 left belonging to stockholders plus Daytona Beach.

Q And you were ordered and directed to return $400,000; is that correct?

MR. WILSON: Objection.

THE COURT: Sustained. The order will speak for itself, Mr. Seidman. If you want to produce it, you are free to do so.

MR. SEIDMAN: Very well, your Honor.

[Defendant Feinberg's Exhibit X marked for identification.]

[Defendant Feinberg's Exhibit Y marked for identification.]

Q Mr. Feinberg, I now show you Feinberg Exhibit X for identification and ask you if you can tell us what this is.

A It's a letter written by Ivan Ezrine to Seymour Weiner & Company, who gave me a copy of this letter, regarding the disposition of the 170 shares of Manor common stock.

Q Could you tell us what date appears on that letter?

A December 21, 1970.

MR. WILSON: I have no objection.

MR. SCHWELLER: May I see that?

MR. SEIDMAN: Sure.

THE COURT: I would like to see it, also, please, when Mr. Schweller is through.

MR. SEIDMAN: Yes, your Honor.

MR. SCHWELLER: No objection.

*** [Defendant Feinberg's Exhibit X received in evidence.]

Q Mr. Feinberg, on December 21, 1970 was Lawson Bernstein your attorney?

A Yes, he was.

MR. SEIDMAN: To save time, I will read this to the jury.

THE COURT: You are perfectly free to read it. If they can make head or tail of it, they are better than I am.

MR. SEIDMAN: Maybe that is the point of the whole case, if Mr. Feinberg --

MR. WILSON: Maybe he could, and that is what the Government is proving.

MR. SEIDMAN: I want to read this letter, if I may.

THE COURT: All right.

[Mr. Seidman read from Defendant Feinberg's Exhibit X.]

Q Did Mr. Ivan Ezrine receive any other compensation from the Manor Nursing Centres, Inc. underwriting other than the $50,000 law fee that was paid to him?

A Two companies got stock.

THE COURT: Two companies --

THE WITNESS: That he owned.

THE COURT: That he owned. I see.

THE WITNESS: I'm sorry.

THE COURT: And they got stock in Manor Nursing?

THE WITNESS: That is correct.

Q And could you tell us the names of those two companies?

A Glendale and Atlantic Services.

Q Will you tell us either how much stock each one received or collectively how much --

MR. WILSON: It is all in the prospectus.

THE COURT: If it is all set forth -- did he and his companies receive the compensation specified in the prospectus?

THE WITNESS: Yes, they did.

Q Can you tell us what other asset or thing of value Mr. Ezrine contributed on behalf of Glendale, Inc. or Atlantic Securities --

MR. WILSON: Services.

Q -- Serves == to Manor Nursing Centres, Inc.?

A He paid five cents a share.

Q And other than the five cents per share did he give any other physical asset to the company?

A No, nothing at all.

Q In addition to the 50,000 law fee and the stock received by Glendale and Atlantic Securities --

A Services.

Q -- Services Corporation owned by or controlled by Ivan Ezrine, did he receive any other monies out of the underwriting or things of value?

A Not that I know. He got a $20,000 fee, a month later, but not --

Q What was that $20,000 about, if you know?

A That was a merger of Capital Cities and Manor. He got either 20 or $30,000 for that.

Q And when you say he got 20 or $30,000 for that merger, was that by way of a law fee?

THE COURT: I thought Mr. Feinberg said it didn't have anything to do with the issuance of the stock.

THE WITNESS: No, it was later on.

THE COURT: We aren't interested in every fee Mr. Ezrine ever received.

Q Can you tell us, if you would, and if you know,

whether prior to February 8, 1971 Mr. Feinberg on behalf of either Glendale --

THE COURT: Mr. Feinberg?

Q -- Mr. Ezrine, Mr. Ivan Ezrine, on behalf of Glendale or Atlantic Services, his two corporations, did in fact sell the stock they had obtained in that underwriting to the general public?

A We found out in Judge Motley's trial he sold 17,000 shares at $10 a share.

Q And can you give us the approximate --

MR. WILSON: There is a way to do that, Judge. We will stipulate --

THE COURT: May I see counsel at the side bar?

(In the robing room.)

THE COURT: I am very bothered by this line of testimony, regardless of whether Mr. Wilson is bothered by it. I don't see what the question before the jury, namely, whether these two defendants are responsible as charged, has to do with what Mr. Ezrine got out of this.

Now, we have allowed a lot to go in that indicates that he got a lot out of it. What relevance do you say that at the trial before Judge Motley it came out that he had sold 17,000 shares.

MR. SEIDMAN: Number one, your Honor. I didn't

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robing room. We aren't trying Mr. Ezrine's intent.

MR. SEIDMAN: I think that is part of the case.

THE COURT: No, it is not.

Well, I have had my say.

(In open court.)

MR. SEIDMAN: May this be marked collectively as Feinberg's Exhibit Z.

(Defendant Feinberg's Exhibit Z marked for identification.)

xx

Q Mr. Feinberg, I now show you Feinberg's Exhibit Z for identification, which consists of four sheets of paper, two of which appear to be photocopies and two of which appear to be originals.

MR. WILSON: Your Honor, I don't think this witness can authenticate these documents.

MR. SEIDMAN: I will call Mr. Werner back if you want me to.

MR. WILSON: Absolutely.

MR. SEIDMAN: But he can testify as to them for whatever probative value his testimony is.

THE COURT: I don't know whether he can or not. Go ahead.

Q Mr. Feinberg, I show you Feinberg's Exhibit Z and ask you whether or not you have ever seen these exhibits

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before?

THE COURT: The sheets, you mean. There is only one document.

Q The exhibit consisting of four sheets of paper.

A Yes, I saw all four of these.

Q And can you tell us what they are?

A Three of them are indications of purchases of Manor Nursing Centre stock and the fourth one is just a straight purchase.

Q Now, can you tell us whether or not you had any conversations with Benjamin Werner concerning Defendant's Exhibit Z for identification?

A He said that --

THE COURT: No, did you ever have a conversation?

A Apropos of this?

Q Yes.

A Yes.

Q What --

THE COURT: Don't tell us what he said.

Q Can you tell us when that conversation took place? The approximate date, if you don't know.

A This was just before the underwriting.

THE COURT: Just before February 20th?

THE WITNESS: On February 20th.

THE COURT: On February 20th.

for this jury to concern itself with and that it must decide the case on the facts that it has before it in this courtroom.

MR. SEIDMAN. Or the lack of facts.

THE COURT: Or the lack of facts. And knowled... I really feel fairly strongly about this and I am inclin... well, I can wait until tomorrow morning, I suppose, but I don't want to postpone it beyond that.

(To the Clerk) If somebody on the jury asks you, you can tell them that you have communicated the question to me.

(Discussion off the record.)

MR. SEIDMAN: I am not on equal status with Mr. Wilson with respect to calling Mr. Ezrine as a witne...

MR. WILSON: Yes, your Honor, as to calling hi...

MR. SEIDMAN: In view of the fact that Mr. Wilson has had an opportunity to question Mr. Ezrine.

THE COURT: Look, Mr. Seidman, that is up to you. You don't need a speech for the record. There is no issue about that.

MR. SEIDMAN. I formally request that Mr. Wils... deliver to me the 3500 material, using that in quotes, as to Mr. Ezrine.

MR. WILSON: What 3500 material do you think

I have?

THE COURT: He hasn't testified.

MR. SEIDMAN: I know. Any statement or information --

THE COURT: Please gentlemen, you don't need to refuse, Mr. Wilson. The motion is denied.

(In open court, jury in box.)

THE COURT: Ladies and gentlemen, Mr. Feinberg and Mr. Seidman have a few other witnesses to call, whose testimony will be brief, such as those who testified this noon, but they will not be available until tomorrow morning, so with the consent of the Court, the defendant has agreed that the Government may present its witnesses at this time so we don't waste the afternoon. Except for the witnesses who will testify tomorrow morning, you have rested, is that correct, Mr. Seidman?

MR. SEIDMAN: Yes, your Honor.

THE COURT: And you have also, Mr. Schweller, is that correct?

MR. SCHWELLER: Yes, your Honor.

THE COURT: That means that except for the witnesses tomorrow morning the defendants have completed the presentation of their testimony.

I told you at the outset that the Government has

THE COURT: That is, roughly, four and a half hours. I am trying to think this thing through. I am supposed to have five sentences tomorrow morning. They won't take very long. There is no way of our completing that before lunch, in any event.

MR. WILSON: I wouldn't think so.

THE COURT: I think it is better for me to go ahead with the sentences. We will start this case around 10:30. That means counsel for the defense can complete before lunch and you can complete in the afternoon.

MR. WILSON: Yes, your Honor.

MR. SEIDMAN: If your Honor please, there was some legal issues that were spoken about yesterday evening before we left, to wit, the inquiry by the jury concerning, as I understood it, "Where is Mr. Ezrine"?

THE COURT: Yes.

MR. SEIDMAN: I believe, your Honor, I had in - dicated some thoughts and, if I'm not incorrect, it was my impression that you said you were going to think further about it.

THE COURT: To the extent that I have thought further about it, which is limited, I have come to the same conclusions that I did last night. I am perfectly willing to hear anything you have to say or anything anyone

has to put before me.

My intention, unless something else comes out of this conversation, is to treat the Ezrine problem, so to speak, as follows:

Insofar as he is an uncalled witness, simply to give an instruction with regard to uncalled witnesses, but not to refer to Mr. Ezrine or anybody else in particular. So, insofar as he is a defendant in the case but not on trial before this jury, I will advise the jury that the indictment charges a conspiracy among the two defendants on trial and a number of other persons who are not on trial and that the jury is concerned only with the defendants who are on trial.

I propose to do nothing else as to Mr. Ezrine.

MR. SEIDMAN: When your Honor states that he really is only concerned with the defendants on trial, I understand that physical happening, but from the standpoint of the factual happening that is on trial and the legal issues, I would not want the jury to come to a conclusion, which I respectfully state might be drawn from your Honor's articulation, as I see it, whereby they might disregard --

THE COURT: Mr. Seidman, if you would have done what I have asked you to do for a long time now, to give me a statement of your contentions of this case, I will

lay that out before the jury, which will say that Mr. Ezrine was to blame for everything that Mr. Feinberg did. At least I assume that that is what you are going to say.

Let's not make a mountain out of a mole hill. I am going to treat it the same as I have treated fifty other cases, which is to say to the jury: You are trying two people and you are not trying five others and don't worry about what happened to Mr. Ezrine or Mr. Werner -- well, Mr. Werner appeared.

MR. WILSON: Out of the four individual defendants, three of them have testified.

THE COURT: The disposition of the other cases is not for this jury. That is what I mean, Mr. Seidman.

MR. SEIDMAN: If those were the words, I would have no problem.

THE COURT: Those words will be used.

MR. WILSON: The only concern I have, your Honor, is that it is not relevant to this trial whether or not Mr. Ezrine has or has not pleaded guilty.

THE COURT: Of course, I will not put that before the jury.

MR. WILSON: The use of the word disposition is the word that troubles me. It seems to me that there is merely the sentence of Mr. Ezrine awaiting that is

knowing he doesn't have the money in the account and the thing closes.

With respect to the scheme to fraud, the mail fraud, I think it really is the second half. The scheme to defraud in this case within the mail fraud section really must depend for the most part, I think, on the fact that the people should have gotten back their money back if the all or nothing terms had been met, but --

THE COURT: Why is it necessary to put both sets of counts to the jury?

MR. WILSON: I understand the practical problem.

THE COURT: I think it is not only practical, I think it is going to make it much more difficult for the jury. I think nothing will be accomplished in the administration of justice. It will make it much harder for me to charge the jury. I urgently request the Government to drop the mail fraud counts, which it has done in other cases similar to this over which I have presided.

Subject to that urgent request, the motion on behalf of Mr. Delmonico is denied.

Mr. Seidman.

MR. SEIDMAN: If your Honor please, an indictment is a formal document handed up by the Grand Jury of the

United States, and this particular indictment contains specific allegations as made by that Grand Jury and under which my client stands charged before your Honor. It is not for the prosecutor in this case to try any other case in this forum other than the case and the allegations that are charged in this indictment.

The reason that I make these remarks are as follows:

With respect to Counts 15 through 28, your Honor, I respectfully state that the charge therein contained is an allegation that my client violated sections 1341 and 42 of the United States Code. Those counts of the indictment are specifically enumerated, your Honor. They bear numbers from 15 through 28.

I respectfully submit to your Honor that he can look through the entire record of this trial and there is not one specific piece of evidence with respect to any piece of mailing or the happening of a mailing with respect to any of these specific counts. There is no proof of mailing to Herman Reich, Thomas Carey, your Honor and -- I'm reading the wrong sheet. I have reference to S. Peter DiFeo and --

MR. WILSON: They are all in evidence and identified by Mr. Werner.

MR. SEIDMAN: I will get to that.

MR. WILSON: Just trying --

THE COURT: If you want to say it is in evidence but it doesn't prove the proposition, that would be more helpful.

MR. SEIDMAN: I was about to say in evidence for purposes of this type of charge, your Honor, the mail fraud charge. In addition, a reading of the Werner testimony would indicate that he testified that there were instances during which people would pick up either their confirmations or their stock. Now, whether or not the specific allegations contained in Counts 15 through 28, sir, fall within that exception where the mails were not used and whether or not Counts 15 through 28 fall within the situation where the mails may have conceivably been used would indicate that the prosecutor has not proved his case here, if he can merely show that even in 99% of the times Benjamin Werner did in fact mail this type of confirmation or stock to individuals.

THE COURT: Have you got any authority for the proposition that you are arguing, Mr. Seidman?

MR. WILSON: I hesitate to interrupt --

THE COURT: Don't interrupt.

MR. SEIDMAN: Mr. Wilson --

THE COURT: You will have a chance to answer.

MR. WILSON: It might save time.

THE COURT: It never does.

MR. SEIDMAN: That is true.

THE COURT: Mr. Seidman, have you looked at any cases on this?

MR. SEIDMAN: If your Honor please, I think it is so axiomatic --

THE COURT: If it is it may be in the cases.

MR. SEIDMAN: I have begun on that but I don't have it with me, your Honor, but that is my position.

THE COURT: I understand it is your position, I want to know whether it has ever been decided.

MR. SEIDMAN: It really is simple. It is my contention that, A, with respect to Counts 15 through 28 that there is no proof of these specific mailings referred to in those counts, but even more importantly, your Honor, is my contention with respect to those counts that the testimony adduced at this trial would indicate from Mr. Benjamin Werner, at least, because there is no testimony from Orvis Brothers, your Honor, as to any mailing or any conduct of that business during the time in question, your Honor, and more important than the law are the facts, your Honor, in my belief.

THE COURT: The facts are no more important than the law. I'm asking whether anybody has any authority on the question.

MR. SEIDMAN: I will attempt to have that for you later today.

THE COURT: It will have to be today.

MR. SEIDMAN: Yes.

Further, I submit that with respect to Orvis Brothers there is absolutely no testimony in this case concerning any mailings by Orvis Brothers for anybody competent enough to have testified. With respect to the timeframe that the indictment alleges as to those specific counts, if you listened carefully to the testimony of Mr. Netelkos as to whether he was or was not in Orvis Brothers, I move that there is no proof and the Court has to rule as a matter of law that these counts in the indictment have to be dismissed in view of the fact that there is no proof, there is a variance in the proof and no jury can intelligently determine from this record whether or not the specific mailings referred to in those counts 15 through 28 did in fact occur here and it would be improper to let them even to infer that because the indictment is specific in its allegation and the Government has failed to meet its burden.

Now, with respect to Counts 2 through 14, your Honor, I reiterate each and every statement that I made with respect to Count 15 through 28 because again --

THE COURT: You don't need to say it again. I understand.

MR. SEIDMAN: More importantly, the District Attorney, the prosecutor, must prosecute the case that is charged in the indictment and I submit to your Honor that with respect to the Title 15 violations, which is the predicate of Counts 2 through 14, that the act that the Grand Jury here as being the transgression under which it indicted my client with the specific allegations referred to in Counts 2 through --

THE COURT: Mr. Seidman, you are just repeating what you said on 15 through 28 and I understand. You don't need to go into detail about the same thing.

MR. SEIDMAN: And all of the other testimony with respect to Title 15, to wit, the testimony of Crespi, the testimony of Mr. Pieratos are all irrelevant to this case because those happenings were not charged specifically in this indictment nor were they alleged with respect to Count 1 in the indictment which constituted the conspiracy and the overt acts which fulfilled the conspiracy.

I call your Honor's attention to the indictment

and I say that most respectfully, because I submit, your Honor, that the case that was tried in this courtroom in no way related to the specific allegations that the indictment made as to my client, and what the prosecutor has sought to do in this case --

THE COURT: Never mind what the prosecutor sought to do. The sole question before me at the moment is whether what is in the record is sufficient to go to the jury.

MR. SEIDMAN: I submit to your Honor that there is no proof as to Counts 2 through 28, on the grounds that I have stated and I wish to move to strike certain testimony that was submitted to this Court under my standing objection on the grounds that that testimony has no relevancy to the accusations contained in the indictment and that testimony would be the testimony of Mr. Crespi. He is not --

THE COURT: The motion is denied.

MR. SEIDMAN: The testimony of Mr. Pieratos.

THE COURT: Will you remind me what that testimony was?

MR. SEIDMAN: That was the testimony that my client solicited an order -- solicited the purchase of the stock from this businessman.

THE COURT: I think that testimony was relevant at least with regard to motive and intent and that motion is denied.

MR. SEIDMAN: Further, your Honor, I submit that Title 15 was not the appropriate section under which this action should have been brought by way of indictment and I submit --

THE COURT: I don't see that the defendant has any right to tell what section he should be indicted under.

MR. SEIDMAN: I am moving to dismiss, your Honor.

THE COURT: You can move to dismiss if the evidence doesn't support the charge, but you can't say that it shouldn't have been the charge.

MR. SEIDMAN: I guess semantically your Honor is correct.

If your Honor please, I submit that the facts in this case, assuming that they have been proven, do not fall within the purview of Title 15, 10-b-5.

THE COURT: I disagree with that. It falls squarely, centrally, critically and overwhelmingly within that section, if they have been proven.

MR. SEIDMAN: If your Honor please, I further move to dismiss this entire indictment on the grounds that the Government has so failed to sustain its burden of proof that the jury couldn't infer, even, reasonably, from the facts adduced at this trial that my client has in any way violated any of the sections of law applicable here, and the reason I state that particularly is that although all witnesses are available to both sides -- and I would state that that may well be the case here today -- that the failure of the Government to call Ivan Ezrine as a witness in this case shows that there can't be an inference or a conclusion drawn intelligently by any jury, absent that testimony, and the aspect of availability doesn't satisfy the issue of lack of proof, and absent the testimony of Mr. Ezrine I believe that to submit this case to the jury and ask them to infer what were the true facts of this case, where this Court has accepted a plea of guilty from Mr. Ezrine and clearly the Government has had an opportunity to question and speak to Mr. Ezrine and to evaluate, for whatever reason that be, whether or not it intended to use Mr. Ezrine as a witness, that absent that testimony the Government --

THE COURT: I think that the argument that you are just making, Mr. Seidman, wins the prize for

unmeritoriousness and overrule it.

MR. SEIDMAN: I didn't mean it in that sense, and I was not looking for any price, your Honor.

THE COURT: Now, I denied the motion as to Count 1. I would like to hear what the Government has to say with respect to the proof of mailing.

MR. WILSON: Yes, your Honor, with respect to the confirmations constituting the mailings from Benjamin Werner & Orvis Brothers, with respect to the mailings, Government's Exhibits 67 and 68 in evidence, which are the mailings corresponding to the Benjamin Werner mailing counts. page 1043 of the record contains the following colloquy.

Mr. Werner identified both 67 and 68. He was asked --

THE COURT: 1047?

MR. WILSON: 1043, your Honor --

"Q How was 67 sent to the people who received it or how was it sent?

"A It was sent with an original confirmation prospectus enclosed in a brown manila envelope.

"Q Was it put in the mail or hand delivered?

"A Put in the mail."

That is direct testimony.

THE COURT: That covers what counts, that exhibit?

MR. WILSON: 67 covers all of the confirmation mailings with respect to Benjamin Werner.

THE COURT: Whether in the second group of counts or the third group of counts?

MR. WILSON: That is correct, your Honor.

Now, with respect to the Orvis mailings, page 255 of the transcript, Mr. Netelkos on page 254 was shown the confirmations. On page 255 he was asked:

"Q How does the customer at Orvis Brothers receive the confirmation?

"A He receives it by mail.

"Q Is that true for all confirmations at Orvis Brothers?

"A That is true, I would say, for 99 per cent of them.

"Q Was there a general practice at Orvis Brothers?

"A It was a practice for all customers except for the partners to receive confirmations by mail."

MR. SEIDMAN: Your Honor, I submit that based on that testimony alone, where the witness said 99 per cent, that there is no proof on this record that the particular confirmations in this case were the other one

per cent with the partners.

THE COURT: There is no evidence that the other persons were partners of Orvis Brothers.

MR. SEIDMAN: That is a lack of evidence, your Honor.

THE COURT: All right. On the basis of that demonstration by the United States Attorney, the motion as to the remaining counts is denied.

Now, gentlemen, I would like to break for lunch and meet again at 2:00 o'clock in my chambers, if you will, to review the requests to charge.

Mr. Seidman, do you have your statement of contentions of Mr. Feinberg?

MR. SEIDMAN: I have not, your Honor. I hope to get them in.

THE COURT: Have you seen the Government's?

MR. SEIDMAN: I have seen the Government's --

THE COURT: We can go off the record.

(Discussion off the record.)

MR. SEIDMAN: I will object to the reading of any contentions submitted by the Government as being prejudicial to my client, in that it is an argument which should be reserved for summation, and that opportunity has been granted to both parties.

law correctly I will do something about it, but I have not had a request or a proposal on your part, no authority, no nothing.

I charge and I believe it to be correct, that where a potential witness could have been called by either side, then the jury in effect is free to draw whatever inferences it wishes to or no inferences from the failure of such a witness to be called.

That is put in various ways but that actually really is what the request submitted by the Government adds up to.

MR. SEIDMAN: Your Honor, when you state inferences, does that go to a lack of proof?

THE COURT: It means the jury can believe that you were afraid to call Ezrine because he would be bad for your side or they can believe that the Government was afraid to call them because he would be bad for their side or both or neither. Indeed, it is such an innocuous statement that it is hardly worth making, but Ezrine's absence is conspicuous in this case and it is worth my commenting so the jury knows what it is allowed to do, and I am telling them they can do whatever they want.

Request No. 19 is granted.

Request No. 20 is denied.

CHARGE OF THE COURT

(In open court, jury present.) 580a

CHARGE OF THE COURT

THE COURT: I want to state this will be quite a long charge, ladies and gentlemen. So unless you are interested in hearing the whole charge, you should leave now. I am talking to the audience now, of course, not the jury.

Ladies and gentlemen, we have been together a long time. You have heard a lot of testimony and seen a lot of exhibits which you have a right to call for if you wish to. I assume you probably will wish to examine some of the exhibits.

The purpose of my charge will be two-fold:

First and most important, to tell you what the law is with regard to the various charges contained in the indictment, second and less important, in a way that I will explain in a minute, to give you a resume of what the contentions of the Government are as to what happened here and what the contentions of Mr. Feinberg and Mr. Delmonico are as to what happened here.

I say that is a less important purpose, for one important reason and that is that it is your recollection of the evidence that cotrols, not what I say, in this charge, and of course you have been reminded by the attorneys, quite properly, that if you have any doubt or

differ among yourselves as to what was testified to here, you can ask to have the testimony read back.

Now, I feel that we have developed a sort of relationship, all of us, in the handling of this case, and I wish that the law were simple enough so that I could simply sit here and talk to you the way I am now, in an informal manner, and give you the propositions of law that are to guide you, but we live in an age which is more complicated than that, and to be certain that I cover everything exactly as I think it ought to be covered in a matter of this importance, I have, as has now become the custom in this court, reduced my charge to writing, and I will read it.

I mention this both in a manner to apologize but, more importantly, to suggest to you in advance that if I should read too quickly -- sometimes I have a tendency to do so -- you should let me know, because I want to be sure that you thoroughly understand everything that I am saying in this charge, and if you do find that I am reading too quickly or if for any reason you haven't understood what has been said here please raise your hand, so that I will be sure that you do understand all that I have to say.

Now, this is a long charge, ladies and gentlemen,

for two reasons:

First of all, the legal propositions I have to advise you about are fairly long and involved, and, secondly, the inclusion of this list, the contentions that I will describe to you of the parties will take some time to read.

If your attention lags or if I think there should be a break in our proceedings I will call one, but please let me know if you are getting too tired, because I want you to be fresh in listening to what I have to say.

With these preliminaries I will now go ahead.

Ladies and gentlemen of the jury: Now that you have heard the testimony and the arguments of counsel, the time has come to instruct you regarding the law governing this case. You have been chosen and sworn as jurors in this matter to try the issues presented by the allegations of the indictment, and on your determination of the facts -- and I stress the words your determination -- to decide under the law as I shall instruct you whether the Government has or hasn't proven the charges of the indictment against Ira Feinberg and Joseph Delmonico or either of them, beyond a reasonable doubt.

I will discuss those charges with you later in detail, but before that I want to give you a few important instructions.

First, you are to perform your duties as jurors

without bias or prejudict to or for anybody, whether the Government or either of the defendants. The law doesn't permit jurors and you would not want it to permit jurors to be governed either by sympathy or swayed by present or public opinion.

Second, we start with the proposition that we started with at the outset of the trial: That the law presumes every defendant to be innocent of every charge against him. You will recall that when I selected you to serve on this jury I specifically asked each one of you if you could enter upon the discharge of your duties presuming Mr. Feinberg and Mr. Delmonico to be innocent unless proven guilty beyond a reasonable doubt after your own deliberations, and each of you gave me the answer, "Yes."

This presumption of innocence is alone sufficient to acquit either defendant unless or until you as jurors have unanimously satisfied yourselves beyond a reasonable doubt of that particular defendant's guilt on the particular charge from all the evidence that has been presented.

The burden or the responsibility is on the Government to prove each defendant guilty beyond a reasonable doubt of every essential element of the crimes charged, and I will, of course, advise you later in this charge just

what those elements are.

Third, the existence of the indictment in this case doesn't constitute evidence against either defendant but is merely a method of bringing a charge against him. The indictment in this case contains 28 counts, as you know. Each count contains a separate crime which I will describe to you later, and the 28 must each be considered separately. The indictment names two defendants who are on trial. It names other defendants who are not on trial. It is the defendant on trial whose innocence or guilt you must announce in your verdict and you are not to concern yourselves with the innocence or guilt of any other defendant.

You must bear in mind that guilt is personal. The guilt or innocence of a defendant on trial before you must be determined separately with respect to him, solely on the evidence presented against him or the lack of evidence. The case of each defendant, in other words, stands or falls upon the proof or lack of proof of the charge against that defendant and not against someone else.

Now, I have said that the Government has assumed the burden of proving a defendant guilty beyond a reasonable doubt. Let me define that important term for you at the outset.

A reasonable doubt is not a vague, speculative or imaginative doubt. It is a doubt which, as the phrase suggests, is based on reason and which comes either from the evidence that has been put before you and that you have heard and seen, or from the lack of evidence that you have not heard or seen. It is a doubt which a reasonable man or woman might entertain. It's a doubt -- and I think that this is the best definition -- which would cause reasonable people like yourselves to hesitate to act in relation to matters of importance in your own private lives.

Let's say you have an important decision to make. How do you go about making that decision? You think about everything you know about it. You think about everything you would want to know and that you have not been told, and you say to yourself, don't you, "Do I have enough information? Do I have enough dependable information so that I am ready to act?"

If you say you don't have enough information then you have a reasonable doubt. If you cannot you have no reasonable doubt.

A mere suspicion will not justify a conviction. Suspicion is not a substitute for evidence, nor is it sufficient to convict the defendant if you find that the circumstances merely render his guilt probably. The law

doesn't deal in probabilities.

Now, since the burden or responsibility is on the prosecution to prove a defendant guilty beyond a reasonable doubt, a defendant has the right to rely on the mere failure of the prosecution to establish his guilt, or a defendant may also, of course, rely on his own testimony or on the testimony of his witnesses.

In saying that the Government must prove its case beyond a reasonable doubt if there is to be a conviction I do not mean to say that the Government is required to prove guilt beyond all possible doubt. Indeed, in human affairs it is hard to think of anything that we can prove beyond all possible doubt, with the possible exception of a mathematical proposition, but the proof must be, as I have said, of such a convincing character that you would be willing to rely and act on it in the most important decisions of your own affairs.

Now, ladies and gentlemen, let's talk about the question of credibility of witnesses. I quite agree with the counsel, who agree with each other, that the determination of this case depends largely on whom you believe, and therefore I want you to pay close attention to what I am about to discuss with you, because that has to do with the subject of how you determine the credibility

of witnesses. The evidence in this case, as I have told you a number of times consists of the testimony of witnesses, the exhibits which have been received in evidence and the facts which have been stipulated to or agreed by counsel.

You have to decide the case based solely on the evidence, but in your consideration of the evidence you aren't limited to the bald statements of the witnesses. You are entitled to and indeed in this case I think you must think beyond the mere words that have been uttered.

In deciding the many questions before you it is your job to determine the credibility or believability of the witnesses who have testified here. How do you go about that?

Perhaps the best answer is to say that you determine the truthfulness or accuracy or weight to be given to a witness' testimony in the same way that you would determine the questions in your own personal affairs.

We are all constantly called upon, if you think about it, from day to day to determine how much confidence we place in the statements that people make to us. Truthfulness or dependability of a witness, as that of any other person, can be determined by the demeanor, that is, his look, his relationship to the case and to the parties, the possibility of his being biased or partial

or of his not being biased or partial, the stake that he may have in the outcome of the case, the reasonableness or unreasonableness of his statements, the strength of the weakness of his recollection and the extent to which what he has said has been either corroborated or contributed by testimony of other witnesses or by exhibits or stipulation.

Of course, the testimony of a witness may also be impeached by his own prior inconsistent statements unless there is some explanation for the inconsistency.

In ordinary life when you need to determine the truthfulness of a person you ask yourself, don't you, as you would here, "How did he impress me? Did his version appear straightforward and candid, or did he appear to be hiding some of the facts? Did he have any motive to testify falsely or no motive of that kind?"

The ultimate question for you to decide upon in passing upon the credibility of a witness is did he tell the truth before me. It is for you jurors alone to determine the weight and credit to be given to the testimony of a witness, and in making these suggestions, I am giving you guidelines only, and I am not attempting nor have I attempted to suggest how to apply these guidelines.

If you find that a witness has wilfully, that is,

purposely, testified falsely to any material -- that is, significant -- fact or matter, not some matter which you believe to be unimportant, you may reject the entire testimony of that witness or you may accept such portion of it as you believe and reject the the remainder.

There are also certain special rules which I wish to bring to your attention relating to the testimony of witnesses. First, as to the testimony of accomplices. In the prosecution of crime, the Government is often called upon to use witnesses who are accomplices in the commission of the crime itself. That has been done here. This is particularly so in a case charging a conspiracy.

Conspirators do not normally proclaim their intentions openly, and it often happens that only members of the conspiracy itself have evidence which is relevant to and important in the case.

However, experience has shown that accomplices may be motivated to place the blame on others than themselves. Therefore, an accomplice's testimony should be carefully scrutinized and checked with the facts which you find to exist in this case and against the evidence which may corroborate it, and then you should give the testimony of the accomplice such value or weight as you deem proper in the circumstances.

In this connection, I want to talk to you about those accomplices who are awaiting sentence by this Court. I have previously advised you that the power of sentence in this court is reposed in the Judge and only in the Judge and the United States Attorney and Assistant United States Attorney have no power whatsoever with respect to the sentence.

In saying this, however, I do not wish to suggest what weight should be given to the defense argument that a human being may color his testimony in the hope that some judge may give him recognition for such cooperation if such it can be called.

You should consider this matter in your assessment of the credibility of these witnesses as you did with other witnesses. You must ask yourselves, is he telling the truth. In the case of the witnesses I am talking about, have they colored their testimony in the unwarranted hope that they could secure more favorable treatment? This is for you and you alone to decide.

In the federal courts, accomplice testimony by itself may be sufficient to convict the defendant if it convinces you of his guilt beyond a reasonable doubt.

Now, it is also the rule that the testimony of an admitted perjurer should be considered with caution

and weighed with care, but to say this doesn't mean that a man who admits that he has previously lied under oath may not now be telling the truth. This is for you to determine.

I told you at the outset of the trial that a defendant is not required to prove anything or take the stand. Mr. Delmonico hasn't testified in this trial. I charge you as a matter of law that you may draw no adverse inference against Mr. Delmonico from his failure to testify, because that is his right, guaranteed under the Constitution of the United States.

Mr. Feinberg has testified. Obviously, a defendant, as in this case Mr. Feinberg is, has a serious personal interest in the result or outcome of this case.

In judging his credibility you may take into consideration his interest in the outcome of the case. But it doesn't follow that because Mr. Feinberg has a vital interest in the end result he is not capable of telling a truthful story.

Again, it is for you to decide to what extent Mr. Feinberg's testimony has been colored or influenced by his significant interest in the outcome of the case.

Finally I want to talk to you about character witnesses. Mr. Feinberg has put before you several character witnesses. The testimony of the witness with regard to the reputation for truth or veracity of a defendant may itself create a reasonable doubt in your minds that the defendant, in this case Mr. Feinberg, was capable of committing the crimes of which he is charged. If it creates such a reasonable doubt, then, of course, as with any other reasonable doubt, you would have to acquit.

On the other hand, if you believe that the Government has proven its case against Mr. Feinberg as to any of the charges, then as to that charge you may not acquit him solely because you may also believe that he has a good reputation for truth and veracity. Mr. Feinberg is on trial for certain acts, not for his reputation, but you are entitled to take his reputation into consideration in determining whether it is likely that he committed the acts charged.

There has been a lot of discussion here, ladies and gentlemen, and I understand there has been discussion within the jury, and I have so advised counsel, about the failure to call Mr. Ezrine as a witness. I charge you that the rule of law in regard to such a situation is as follows: If a witness could have been called either by the Government

or by the defendants, as is the case with regard to Mr. Ezrine, and neither side called him, you may infer as you deem fit either that the testimony of the witness Mr. Ezrine might have been favorable to one side or to the other, or you may decide not to draw any inference at all from the failure of both sides to call Mr. Ezrine. In other words, it is purely up to you, the jury, to decide what inference, if any, is to be drawn from the fact that he was not called as a witness.

Now, ladies and gentlemen, as I have said, your determination in this case must be made on the evidence and there are, generally speaking, two types or categories of evidence from which you may properly find the facts. I am sure you have heard them referred to often. One is called direct evidence. That is evidence of an eye or ear witness:

"I've heard it," such a witness would say, or, "I've seen it."

The other is indirect or more generally called circumstantial evidence. Circumstantial evidence is defined as proof of an event or circumstance which points to the existence or non-existence of facts as to which there was no eye witness or ear witness. The law makes no distinction as to the way to be acquitted to circumstantial as distinct from direct evidence. It requires only that the jury find

the facts in accordance with all the evidence in the case, both direct and circumstantial, beyond a reasonable doubt.

An example, by the way, of the difference between direct and circumstantial evidence is the following, and the example is given pretty often to juries, but it is vivid, I think, and worthwhile:

If you looked out of the window, pulling up the shades behind you, and saw that it was raining that would be direct evidence that it was raining. On the other hand, if all the blinds in the room were drawn and somebody came through that door over there with a dripping umbrella, that would be pretty good circumstantial evidence that it was raining outside. You wouldn't have seen it with your own eyes, but you'd have the right to infer, seeing a man coming through the door with a dripping umbrella, that it was raining outside. To be sure, he might have been standing under a shower in one of the rooms in this building that has a shower, but that would be highly unlikely and the other inference is the likely one.

Now, ladies and gentlemen, both the United States Attorney and the defense counsel have during the course of this long, hard fought trial objected frequently to the introduction of evidence and addressed arguments to the bench and we have had to go into the robing room, and perhaps

you have heard our voices. I don't know. I want to tell you that is the duty of the attorneys on each side of the case to make such objections when the attorney believes that the other side is proposing to put into evidence or ask questions about something that is not properly permissible and nothing that I have said or done in ruling on objections expresses any view of mine as to how this case should be decided. It is your job and your job alone to make that decision.

Now, the charges in this case, as you know, related to violations of the Federal Securities Laws, laws which are intended to protect the investing public in the purchase and sale of stock that are publicly distributed. the allegations .2am of the first count of the indictment charge the defendants on trial and others not on trial with conspiracy to violate the provisions prohibiting a scheme to defraud in connection with the purchase and sale of securities. Counts 2 through 14 charge the two defendants on trial and others not on trial with actual violations; not just conspiring, but actually violating the law prohibiting schemes to defraud in connection with the sale of securities; and Counts 15 through 28 charge the defendants with violation of the law prohibiting the use of the mails in connection with the scheme to defraud.

I will deal later with the elements of the crime

charged in Counts 2 through 14, but before discussing any of the counts in detail I want to spend a few minutes discussing the securities laws and specifically the Securities Exchange Act of 1934, a law passed by Congress in that year which is the basis for Counts 2 through 14 and which is the basis for one of the elements charged in the conspiracy.

Now, securities or stocks and bonds or other valuable instruments issued by corporations are by their nature different from other types of merchandise for which there are established public markets. Anyone who wants to buy a new car or a household appliance or for that matter a head of lettuce in the supermarket can pretty well determine from personal inspection the quality of the product and the reasonableness of the price in relation to other competing products, but this is not so as to a share of stock. As a practical matter, it is very difficult for the average investor to tell the value or quality of a share of stock by personal examination. He must therefore rely upon available written information about the company, its financial condition, its assets, its management, its operation, its products, its resources, its prospects and the terms and conditions by which the company offers its stock for sale to the public.

In a new offering of stock by a company directly

to the investing public, such as is involved in this case, the basic and, of course, the most important source of information is the prospectus, which is Exhibit 11 in this case. Recognizing the importance of complete and accurate information in connection with stock sales and the further fact that sales of securities often involve the use of the mails, Congress enacted the Securities Laws. These laws set forth a detailed plan for regulating the sale of securities to protect the investing public against fraud. The law requires a full disclosure of all material facts about a security offered for sale and about the terms and conditions of the offering. The purpose of these requirements is to give the public access to all the information necessary to make a realistic appraisal of the merits of the security offered for sale, so that an investor can exercise intelligent judgment in deciding whether or not to buy.

When persons connected with the public offering of stock sell that stock by p blishing a prospectus, the law requires them to tell openly all the facts material to a realistic judgment about the worth of the stock and to stand by that prospectus when the stock is sold to the public.

Having given you that preliminary explanation as to the purpose of the securities laws, I shall now deal with

the law relating to the conspiracy, that is, the elements of the crime charged in Count 1. Title 18 of the United States Code, Section 371 provides in part as follows, and I quote from the law passed by Congress:

"If two or more persons conspire or agree to commit any offense against the United States in any manner or for any purpose and one or more of such persons do any act to effect the object of the conspiracy...it shall be a crime."

Count 1 of this indictment, as made more specific in the Government's bill of particulars, charges that from on or about June 30, 1969 through February 8, 1971 the defendants now on trial and others named in the indictment conspired, first, to enter into a scheme to defraud by violating the securities laws; second, to make false statements to a Government agency; and, third, to use the mails in a scheme to defraud.

It is charged, and I am giving you a resume of the indictment, that the defendants devised a scheme to defraud for obtaining money by means of false representations and for this purpose used the mails of the United States and prepared a fraudulent sticker to be attached to the prospectus issued in connection with the sale of Manor Nursing stock to the public.

Among the means for carrying out this scheme charged by the indictment are the following:

First, that Ezrine and Feinberg caused the sale of 450,000 shares of Manor stock to be declared successfully consummated when they knew that the stock had not all been sold as required by the prospectus, and that no more than $750,000 rather than $4,500,000 required by the prospectus had been obtained in cash.

Second, that Ezrine, Feinberg and Netelkos would arrange for purchase of $1,425,000 worth of Manor stock by Netelkos on condition that Feinberg would lend him $250,000.

Third, that Ezrine, Feinberg, Delmonico and Naiman caused Deneso Corporation to issue $1,700,000 worth of checks for the purchase of Manor stock, although there was less than $100 in Deneso's bank account.

Fourth, that Ezrine and Feinberg caused Netelkos to present $832,500 worth of checks for the purchase of Manor stock, although Netelkos had insufficient funds to cover the checks in his bank account.

Fifth, that Ezrine and Feinberg caused Manor to issue checks for $385,000, although there were insufficient funds in Manor's account to cover these checks.

Sixth, that Ezrine and Feinberg caused the issuance of $170,000 of checks on the account of Feinberg,

although they knew that his account had insufficient funds and they also caused these checks to be used for the purchase of Manor stock in the names of friends of Feinberg who had no knowledge of such purchases.

Seventh, that after February 20, 1970, the date of the closing, Ezrine, Feinberg and Werner caused and permitted the stock of Manor to trade in the over-the-counter market without telling the Securities and Exchange Commission and the public that the offering of stock to the public had not been successfully consummated.

Eighth, that about February 27, 1970 Ezrine and Feinberg caused the filing with the Securities and Exchange Commission of a false and misleading sticker, which asserted that all of the proceeds had been received from the sale of 450,000 shares of Manor stock when in fact it had not been.

Ninth, that on or about March 4, 1970 Ezrine and Feinberg caused the sale of 60,000 shares of Manor stock to David Haber by agreeing to provide him with special compensation and protection against losses.

Tenth, that about March 5, 1970 Ezrine and Feinberg and Werner caused the preparation of a letter which falsely stated that the monies required under the terms of the public offering had been paid to Manor by Werner when in fact those monies had not been paid.

Eleven, that from on or about February 20, 1970 to March 26, 1970, although no more than $750,000 in cash had been obtained through the public offering, Ezrine and Feinberg caused over $650,000 to be paid to the shareholders of Manor who had sold their stock, including $559,000 to Ira Feinberg.

Now, those are the means by which the indictment specifies that the conspiracy was carried out.

As I have told you, the indictment charges that the defendants on trial conspired to carry out the fraudulent scheme alleged in Counts 2 through 14 by violating the securities fraud statute and Counts 15 through 28 by violating the mail fraud statute, as well as a third violation, that is a violation of the statute prohibiting the making of false statements to a Government agency.

In this connection I charge you that the Securities and Exchange Commission is an agency of the United States and that a prospectus, including a sticker amendment, such as exists in this case, constitutes a writing or statement filed with an agency of the Government within the meaning of the law.

Now, ladies and gentlemen, what are the issues that you must decide in regard to the conspiracy count, Count 1, and I deal only with the law regarding Count 1 at

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this point? In order for you to find either Mr. Feinberg or Mr. Delmonico guilty under the conspiracy count you must find that the Government has established all of the following elements beyond a reasonable doubt:

First you must find the existence of the conspiracy charged. Obviously nobody can be guilty of belonging to a conspiracy unless there was a conspiracy as charged in the indictment.

Second, you must find that the defendant whose guilt or innocence you are considering at the time, that is, Mr. Feinberg or Mr. Delmonico, as the case may be, knowingly and willfully associated himself with the conspiracy and joined it.

Third, you must find that at least one of the conspirators named in the indictment committed at least of of the so-called overt acts. I will come to the overt acts later.

If the Government fails to establish any of those essential elements beyond a reasonable doubt as to either of the defendants, then you must acquit that defendant on the conspiracy count.

On the other hand, if you find that the Government has succeeded in proving all of those things as to either of the defendants, then it is your duty to convict him on

Ladies and gentlemen, I get worried sometimes about the instructions that we judges give about a conspiracy because I think sometimes we instruct you to a farethewell. There are a lot of things that is important for you to know, but above all I think you need to have as your mooring for all of your discussion about conspiracy only that a conspiracy is nothing more or less than an agreement of two or more people -- of course an intentional and knowing agreement -- to violate the law, and if you bear that in mind I think all of the other instructions that you get will be much clearer to you.

Now, to establish the existence of the conspiracy, the Government is not required, of course, to show that two or more persons sat around a table in the dark and entered into a pact to violate the law. It would be pretty extraordinary if there was a formal document or meeting for the purpose of establishing a conspiracy.

Common sense will tell you that when people decide to violate the law they are not going to announce it from the house tops. It is sufficient, therefore, if the Government establishes to your satisfaction beyond a reasonable doubt that two or more persons named as defendants or co-conspirators in this indictment in any manner or in

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any way, tacitly or expressly, came to a common understanding to violate the law. Express language or specific words aren't required for that purpose. The offense is complete when the unlawful agreement is made and any overt act to effect the object of the conspiracy is then committed by at least one of the conspirators.

In determining whether the conspiracy charged here did actually exist you may consider the evidence of the acts and the conduct of the alleged conspirators as a whole and the reasonable inferences to be drawn from such evidence. If upon considering the evidence you find beyond a reasonable doubt that at least two of the alleged co-conspirators agree and that they decided to work together in furtherance of an unlawful scheme, then proof of the existence of the conspiracy is complete and the first element would have been proven.

Let us now talk about the second element of the conspiracy, and that is membership in the conspiracy, individual membership. You cannot find either Mr. Feinberg or Mr. Delmonico guilty on Count 1 unless you find that the defendant in question knowingly joined the conspiracy.

Let me be more specific: If you conclude that the conspiracy charged in the indictment did exist you must next determine whether Mr. Feinberg or Mr. Delmonico, as the

case may be, participated in the conspiracy with knowledge of its unlawful purpose and in furtherance of its unlawful objective. To find either of them a member of the conspiracy, you must find that he knowingly and intentionally participated in it. Thus, mere knowledge of the existence of a conspiracy or of any illegal act on the part of another alleged co-conspirator or mere association with one or more of the co-conspirators is not sufficient in itself to establish membership.. The Government must prove beyond a reasonable doubt that the defendant in question was aware of the basic purposes and objects of the conspiracy; that he entered into it with specific criminal intent, that is, with the purpose of violating the law.

Whether or not Mr. Feinberg or Mr. Delmonico was a member of the conspiracy or joined the conspiracy must be determined on the evidence as to his own actions, his own conduct, his own statements and declarations, his own connections with the acts and the conduct of the other alleged conspirators and not on the acts or statements of anyone else.

By the way, ladies and gentlemen, the guilt of a conspirator, if you find that there was a conspiracy and that one of the defendants joined it, is not governed by the extent or the duration of his participation in the

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conspiracy or whether he had knowledge of all of its operations. Even if someone joins a conspiracy after it is formed and engages in it to a degree more limited than that of somebody else, he may still be found guilty of conspiracy.

We come now to the third and last element with regard to conspiracy, and that is the question of overt acts. Assuming that you find that the conspiracy charged existed and that either Mr. Delmonico or Mr. Feinberg became a member of it knowingly, then the question arises whether any of the co-conspirators committed at least one of the overt acts charged in the indictment in furtherance of the conspiracy.

Now, the purpose of requiring proof of a so-called overt act is not inconsequential. It is that while parties may agree to violate the law, they can change their minds and do nothing to carry out the plan. In that case no crime would be committed. You and I could sit here, for example, and plan to blow up the Capitol of the United States and talk about it for days on end, but if we do nothing about it, then that is not a crime. The moment, however, that one of the co-conspirators does something in furtherance of a crime, then the crime of conspiracy is complete.

Now, the overt acts listed in the indictment,

generally speaking, are not necessarily criminal in themselves. That does not mean, however, that such an overt act may not be in furtherance of a crime. For example, if I phone you in connection with our plan to blow up the Capitol of the United States and suggest that we meet at a certain time and place, while it is perfectly normal and not criminal to telephone people, that would nevertheless be an overt act in furtherance of a conspiracy.

By the way, the Government is not required to prove that all the overt acts were committed or that every member of the conspiracy participated in an overt act. To the contrary, it is required only to prove that at least one conspirator committed one overt act.

You will note that the indictment alleges a conspiracy beginning on or about June 30, 1969 and continuing through the date of the filing of the indictment. Despite that language I instruct you that the Government contends that the conspiracy continued only through February of 1971 and not beyond that time. Furthermore, it is not essential that the Government prove that the conspiracy started and ended on this specific date. It is sufficient if you find that in fact the conspiracy was formed and existed for some substantial time within the period between June of 1969 and February of 1971 and that

at least one overt act was committed during that period.

Ladies and gentlemen, you will be entitled to have the indictment with you to read in the jury room and I will simply state as to the overt acts that they can be found starting on Page 6 of the indictment. I will read them, since there are not that many:

"1. On or about February 20, 1970, Benjamin Werner wrote checks.

"2. On or about February 20, 1970, Ivan A. Ezrine and Benjamin Werner went to the Chemical Bank.

"3. On or about February 20, 1970, Chris Netelkos went to Orvis Brothers.

"4. On or about February 20, 1970, Jack Naiman had a telephone conversation with Ivan A. Ezrine.

"5. In or about the end of February, 1970, Benjamin Werner had a telephone conversation with Ira Feinberg.

"6. In or about the end of February, 1970 Benjamin Werner had a telephone conversation with Ivan A. Ezrine.

"7. In or about the end of February, 1970 Ivan A. Ezrine prepared a 'sticker'.

"8. On or about March 4, 1970 Ivan A. Ezrine, Ira Feinberg and Benjamin Werner met David Haber.

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"9. On or about March 5, 1970 Benjamin Werner signed a letter."

Now, you will note that most of those items involve acts which ordinarily would not be criminal, but if you find that one of them was committed by one or more of the co-defendants and that it was committed in furtherance of the conspiracy, the Government will have satisfied its obligation with regard to proving an overt act.

Two sum up as to the conspiracy charge, in order to prevail against any particular defendant under the conspiracy count, the Government must establish beyond a reasonable doubt, first, the existence of an unlawful agreement; second, that the particular defendant in question knowingly and willfully associated himself with the conspiracy; and, third, that at least one overt act in furtherance of the conspiracy was committed.

If it does this, your verdict as to the defendant in question must be guilty. If it fails,your verdict on this count as to the defendant in question must be not guilty.

Now, ladies and gentlemen, I have come to a logical breaking place in the reading of my charge, if we are to have one. I have about as much more to read to you as I have read you already. Would you like to take a short break before I go on?

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All right, let's take a short break.

[In the robing room.]

MR. WILSON: Your Honor, with respect to the conspiracy count and the charge on the conspiracy count, you will recall that the Government asked the Court to charge that with respect to the means paragraphs the Government was not required to prove any of them.

THE COURT: That will appear somewhere.

MR. WILSON: It will?

THE COURT: Yes.

MR. WILSON: I wanted to make sure of that.

THE COURT: I'm pretty sure it will. If not, I will attend to it.

MR. SCHWELLER: At the last moment Mr. Wilson handed me his last contention. I'm opposed to that, your Honor. They may contend it, but they never brought up anything anywhere along this line, not one word of evidence along the way. All they had to show to put in the exhibit was that there was a bank account and the amount of it, but neither in evidence nor in summation did they say anything about it.

MR. WILSON: That is what it says, that it is shown by the bank account.

MR. SEIDMAN: It isn't shown by the bank account.

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THE COURT: Let Mr. Schweller handle this.

MR. SEIDMAN: Yes. Indirectly -- yes.

THE COURT: I think that the Government is entitled to this. I will be glad to add this to your items as to which Mr. Naiman testified. However that may be, Mr. Naiman testified that Mr. Delmonico didn't make a penny out of it, a thin dime out of it.

MR. SCHWELLER: All right, either directly or indirectly, nor the Deneso Corporation. There may be some inference that indirectly --

THE COURT: Yes.

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MR. SEIDMAN: If your Honor please, Mr. Wilson --

THE COURT: Wait a minute. I didn't invite everybody in to make comments.

MR. SEIDMAN: I didn't invite myself in, your Honor. Mr. Wilson invited me.

MR. WILSON: And I did that only because you had finished the conspiracy charge.

MR. SEIDMAN: Do you want me to delay what I had to say?

THE COURT: Yes.

MR.SEIDMAN: I apologize, but it was Mr. Wilson who wanted me to come in.

(In open court, jury in box.)

THE COURT: Ladies and gentlemen, one further minor point about the conspiracy law.

I have read to you from the indictment, or in my charge, a resume of the indictment as to the various means which the Government alleges were used to carry out the conspiracy. As is true with the matter of overt acts, so it is true that the Government isn't required to prove that all of those means were used but just that one or more of them was used.

Now, ladies and gentlemen, I am going to

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read to you or talk with you about the law as to Counts 2 through 14 of the indictment. That group alleges actual violations of the securities laws, not merely a conspiracy to violate them, and I will start by reading to you the law itself which will add a little flavor and be meaningful to you. This is Section 78*j((b) of Title 18 of the United States Code, which you have heard about a number of times.

"It shall be unlawful for any person,directly or indirectly, by use of any means or as the result of interstate commerce or the mail or any facility of any national securities exchange to use or employ, in connection with the purchase or sale of any securities registered on a national security exchange or any security not so registered any manipulative or deceptive device or convevance in contravention of any rules as the Commission, meaning the Securities and Exchange Commission, may prescribe as necessary or appropriate in the public interests or for the protection of investors."

Now, after this act or law was passed by Congress in 1934, the Securities and Exbange Commission did enact a regulation under the authority of this Act which is called Rule 10-B-5 and that is also referred to on the face of the indictment, and Rule 10-B-5 reads:

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"It shall be unlawful for any person, directly or indirectly, by the use of the mails (1) to employ any device, scheme or artifice to defraud; (2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made not misleading or (3) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person."

All of this is in connection with the purchase or sale of any security.

Now, to come down to the present case, to convict either Mr. Feinberg or Mr. Delmonico on any of the counts 2 through 14 -- and the legal charge against each in Counts 2 through 14 is the same, the only difference is that in Counts 2 through 14 is that each one of them refers to a separate mailing -- to convict either of them, the Government must prove to your satisfaction, bevond a reasonable doubt, all of the following elements:

First that the defendant in question in connection with the sale of Manor Nursing stock, wilfully and knowingly engaged in a scheme to defraud or made an untrue statement of a material fact or omitted to state a material fact necessary to make his statements not misleading

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or engaged in a transaction which operated as a fraud on a purchaser of stock.

Second, that the defendant in question used the mails or caused the mails to be used in furtherance of his scheme and, third, that the defendant in question acted knowingly and wilfully.

In other words, the defendant must have known at the time of his participation in the scheme that the public was being deceived or defrauded as a result of the scheme and his participation must have been intentional or on purpose.

Now, in considering whether or not a defendant knew that the public was being deceived or defrauded I instruct you that a belief or intention by a defendant, if such a belief or intention existed, that ultimately everything would work out all right so that no one would lose any money is not an excuse or defense to the crime charged in the indictment.

Furthermore, it is not an element of the crime that a victim of the fraud should have suffered pecuniary loss, just as it is not a defense that a defendant believed or intended that a purchaser of the stock would suffer no loss. And finally it is also not an element of the crime that anything omitted from the prospectus be in

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itself illegal. The illegality in not disclosing material facts in a prospectus is not the unlawfulness of the things put in or left out, but the very fact that they were left out or concealed from the public.

Let me define for you some of the terms I have been using.

A scheme to defaud is a plan by which someone seeks to obtain money or property from someone else by false representations or statements as to a material fact.

Now, a false representation may be made in one of two ways. First, it may be a statement of a material fact that is just not true or, second, it may be made by leaving out from what is said a material fact necessary to make what is said truthful.

In other words, there is an obligation to state all the material fact.s A half truth may be as damaging as any other form of falsehood and when someone issues a prospectus he is legally obligated to tell all the facts necessary to a proper understanding of the particular subject matter which is being covered.

Now, for a misrepresentation to be culpable or blame-worthy it must be of course a representation of a material fact, that is, a fact which is significant

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or which would reasonably be expected to influence a person like yourselves in deciding in this case whether or not to purchase the Manor stock.

I have finished discussing now the first element with regard to Counts 2 through 14 and come to the second, that is, the use of the mails.

Congress has provided in the securities laws that the fraudulent sale of stock is a federal offence, if among other things, a person directly or indirectly uses the mail or causes someone else to do so in connection with the sale of stock.

Here, the mailing alleged in the indictment are confirmation slips and delivery letters specified in Counts 2 through 14 of the indictment. It is not necessary for you to find that either Mr. Feinberg or Mr. Delmonico actually mailed the confirmation or delivery letters so long as you determine beyond a reasonable doubt that by his actions or conduct the defendant in question caused a confirmation or a delivery letter to be mailed and that such mailing might have been reasonably foreseen by him.

Nor is it necessary that the matter mailed contain anything criminal or fraudulent. Moroever, the manner of mailing may be wholly innocent in itself. All that is necessary is that the mailing aided or furthered

carrying out the scheme.

By the way, you needn't find that the mailed confirmation slips crossed state lines. A mailing within New York State itself is sufficient.

Ladies and gentlemen, I have now finished discussing the elements of Counts 2 through 14, the so-called securities fraud counts. I come now to discuss the final group of counts, Counts 15 through 28, the so-called mail fraud counts and I must say that the law particular to them, as you will see, very substantially resembles the law with regard to securities fraud but it is brought under a different section of the law, Title 18, United States Code, Section 1341. That section reads as follows:

I am reading you the law passed by Congress.

"Whoever, having devised or intending to devise any scheme or artifice to defraud or for obtaining any money by means of false or fraudulent pretenses for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail any matter or thing whatever to be sent or delivered by the Post Office Department or knowingly causes to be delivered by mail according to the direction thereon any such matter or thing, shall be guilty of a crime."

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To establish the offense charged in these counts, the Government must prove beyond a reasonable doubt both of the following elements.

First, that the defendant in question knowingly and wilfully devised or intended to devise a scheme to defraud or to obtain money by false pretenses as charged in the indictment, and, second, that for the purpose of executing such scheme or artifice he caused something to be sent by mail.

The first element of the offense is the existence of a scheme or artifice to defraud. I have already explained this concept to you in connection with Counts 2 through 14, the securities laws violations, and the concept is the same for these counts. A scheme or artifice is merely a plan for the accomplishment of an object.

Fraud is a general term which includes all the different things a man can think up to deceive someone else or gain an advantage over him by false representations or by hiding the whole truth. So a scheme to defraud is merely a plan to obtain some advantage or value by trick or deceit.

Since it is the sale of securities which is the subject of the mail fraud alleged in Counts 15 through 28, in determining whether this was a scheme or artifice to defraud for the purposes of the mail fraud statute

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you should consider all the evidence pertaining to and everything I have said concerning the nature of a scheme to defraud under the securities fraud statute and apply those instructions in considering this statute.

Turning to the second element under the mail fraud counts, as in the case of Counts 2 through 14 it is not necessary for the Government to prove that the defendant you are considering actually placed any of the confirmations or letters of delibery in the mail. It is sufficient for the Government to prove that he caused the mailing to be made in the ordinary course of business and that the mailing was made in furtherance of the scheme. Just as with the mailings alleged under Counts 2 through 14, if a defendant took steps which he knew or could have reasonably foreseen at the time would naturally and probably result in the use of the mails, then he caused the mails to be used within the meaning of the law, whether or not he actually mailed the letters himself.

Now, ladies and gentlemen, finally, and before I get to the contentions of the parties, there is one other rule of law I wish to bring to your attention, that is, that there is another alternative basis upon which you may convict either Mr. Feinberg or Mr. Delmonico on the securities fraud and mail fraud counts even if you find

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the defendant you are considering didn't personally commit either crime.

You recall that I told you that once a defendant knowingly joins a conspiracy he is responsible for all the acts of the other members of the conspiracy done in furtherance of the conspiracy.

So, if you find that any of the securities fraud or mail fraud offenses charged in Counts 2 through 28 was committed by another person or persons who were members of the conspiracy with the defendant under consideration by you, and if you find that either the stock fraud or mail fraud was committed in furtherance of the conspiracy and that the defendant whose case you are then considering might reasonably have foreseen that those acts would be done then you may find that defendant guilty of the crimes charged in Counts 2 through 14 or 15 through 28 as the case may be.

As I told you earlier, of course, you will have to consider the case of each defendant and each count separately in this connection as well as in others.

Now, ladies and gentlemen, I have completed the discussion of the charges in the indictment and the elements of the offenses charged. That is the law.

In view of the length of the trial it seems to me that it will help you if I review briefly for you the

contentions of the Government on the one hand and of the defendants on the other, as I understand them.

I emphasize the phrase "as I understand them," because I want to remind you again that in regard to these matters of fact, that is, the contentions, it is your recollection that is controlling and your determination which is binding and not mine.

Before I summarize for you the contentions of the parties I want to repeat again that in a criminal case no defendant has to prove anything. The burden is always on the Government to prove beyond a reasonable doubt that the charges it makes are true. When I come to describe the contentions of the defendants I will do so not because either of them is required to prove anything but only to point to the various factors in the evidence which each of them contends should raise a reasonable doubt in your mind.

I want to caution you also that I do not intend by reviewing the contentions of the parties, to give them any stamp either of approval or disapproval. I present them to you in the hope that they will help you to do your job.

If I leave out anything which you believe is important, please supplement my review with your own

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recollection, and don't think that if I omit anything which you believe is significant you should ignore that item or any other contention which may have been made by any of the lawyers in their summation.

I come now to the Government's contentions:

The Government contends that Ira Feinberg and Joseph Delmonico were involved in a scheme to defraud and a conspiracy to carry out such scheme with Ivan Ezrine, Joseph Delmonico, Christos Netelkos, Jack Naiman, Benjamin and Manor Nursing Centres, Inc.

The Government contends that the prospectus of Manor Nursing stock contains a number of representations which were false and a number of omissions, including the following:

First, that although the prospectus stated that unless all 450,000 shares offered were sold to the public and the funds received within a specified time the offering would be terminated and the funds returned to the subscribers who had made the payments, and that although all 450,000 shares were not sold within the prescribed period and the proceeds of the sale were not received during this period of time the defendants nevertheless knowingly failed to terminate the offering and failed to return the funds to the subscribers as the prospectus

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bound them to do.

The Government claims that by the end of the specified underwriting period, Manor Nursing Centres, Inc. had received only $343,000 in underwriting and yet didn't return those funds to the public investors and that Mr. Feinberg didn't return the $595,000 which he had collected.

The Government argues that Mr. Feinberg and Mr. Delmonico and the other conspirators knew on February 20th that the four and a half million dollars wasn't available but nevertheless went through with the closing and permitted the stock to trade in the market in the expectation that either they would sell some of the stock later or be able to cover up the absence of the monies.

The Government relies on the testimony of Netelkos that he agreed before February 20th to provide checks for which there was no money, of Naiman that he had not yet obtained bank financing or Deneso's check of a million seven on evidence that Ezrine wrote $350,000 in checks which bounced on February 20th and that Mr. Feinberg wrote checks in the amount of 250,000, the same day, which also bounced.

The Government also claims that it was a fraud when the prospectus cover stated that Crespi

would be paid a $25,000 finder's fee although it was agreed that he would actually receive only one-third of that amount and kick back the other two-thirds to Feinberg and Ezrine.

The Government next argues that various types of arrangements for such compensation in the form of cash, puts or otherwise, and guarantees against loss were made to various people without disclosure in the prospectus as follows:

One, that Netelkos was to receive special compensation for selling the stock and a $250,000 loan from Feinberg.

Two, that Klim received $2,500 in stock for promoting the sale of Manor stock.

Three, that Cullere received a $100,000 check from Feinberg as a guarantee against loss.

Four, that Deneso received $105,000 in checks and $35,000 in cash as well as certain notes, puts and calls.

Fifth, that Badash received $3,000 of stock as an inducement to purchase $30,000 of Manor stock.

Sixth, that Haber was given puts guaranteeing his ability to sell the stock he purchased at $10 a share and was also promised that his stock would be repurchased from him at $11 a share and that he would be given 10,000 shares of additional stock.

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Now, as between the defendants on trial before you, that is, between Mr. Feinberg and Mr. Delmonico, the Government contends that Feinberg, along with Ezrine, was the principal participant and decision maker with regard to the scheme and that as president and majority shareholder of Manor Nursing Centres, Inc. as well as a selling stockholder of $559,000 worth of stock, Feinberg stood to gain substantially from the public offering.

The Government contends that Mr. Delmonico's role was smaller but significant nevertheless. The Government argues that Mr. Delmonico wrote a million seven in checks at the closing knowing that there were no funds to cover those checks and knowing that those funds were necessary if the all or nothing public offering was to close successfully.

The Government contends also that Delmonico wrote the check although he knew there was no money to cover them because the participants in the scheme hoped that thechecks would later be made good by getting a bank loan using the stock as collateral or that the absence of money would just be hidden from the parties.

In return for writing these checks Delmonico received on behalf of Deneso $105,000 in checks, $35,000 in cash and notes for over $65,000.

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The Government also points out that after Werner had given Deneso a check for $75,000, which is Government's Exhibit 44 in evidence, and which was deposited in Deneso's bank account, Delmonico signed Government's Exhibit 50 in evidence, a letter dated February 20, 1970 to Werner, which said that Deneso had incurred expenses of $75,000 and requesting payment of that amount, although this letter was false.

The Government also contends that $5,000 of the $35,000 in cash received by Delmonico from Feinberg was never returned but was, as shown by the Deneso bank records, deposited into the Deneso bank account.

Now, Mr. Feinberg and Mr. Delmonico, of course, vigorously dispute the Government's contentions. Mr. Feinberg replied to the Government's arguments as follows.

He states that he was the victim of a fraud committed upon him by Ezrine, Netelkos, Werner.

He argues that in the Manor Nursing Centres, Inc. public offering as evidence by the prospectus, he was the only one, with his wife, who invested any assets, to wit, the Manor Nursing Home property and contracts for land.

In addition he asserts that he and his wife personally guaranteed in excess of $500,000 of money payments as part of the public offering. He points out that in order

to go public he retained the legal services of Ezrine, a lawyer expert in the securities law field. Feinberg emphasizes that Ezrine would earn his law fee of $50,000 only if all the stock was sold and the public offering was closed and also would be able to sell a large block of stock held by his corporations, Glendale and Atlantic Services, only if the offering closed.

Feinberg stresses that Ezrine prepared the prospectus and all the documents necessary for filing with the Securities and Exchange Commission and that Ezrine invested none of his own money in the offering. Feinberg reminds you that on February 20, 1970, Ezrine submitted a legal bill for $50,000 in which he spelled out in detail all of the services that he rendered in connection with the public offering.

Feinberg claims that Ezrine knew Werner before the Manor Nursing Home issue came up and had business dealings with him in large amounts before that time and before the sale of the stock of Manor Nursing Centres.

Feinberg states that Werner admitted that Werner had never met Feinberg on business matters before February 20, 1970, the day of the closing, although they may have met on two prior social occasions.

Feinberg points out that Werner testified that

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he believed himself the legal advice and direction of Ezrine implicitly until September 1971, that he didn't know that the checks -- that is, that Werner didn't know the checks would bounce in advance, and that Werner believed that the stock could be reoffered until March 6th and believed that the closing had been consummated successfully on February 20, 1970.

Feinberg claims that Werner testified that Ezrine prepared all the SEC documents and papers which Werner signed.

Next, that Werner admitted that at the instruction of Ezrine he, Werner, had Crespi endorse his $25,000 fee and that Crespi admitted that he never gave any money to Feinberg nor did Feinberg ask him for any money. Crespi stated that it was Ezrine who asked for the money back at a meeting with Ezrine and Feinberg.

Next, Feinberg says as to Werner's testimony that Werner testified he had his own attorney at the closing and that Ezrine had told him he was to use an attorney whose name was Harold Greenberg.

As to Netelkos, Feinberg asserts that Netelkos admitted that he lied to Mr. Wilson, that he lied to the grand jury and others about some facts of this case as late as April 1973, that Netelkos admitted that these

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prior lies were intended to put the blame on Feinberg, that Netelkos admitted that it was he who had a New Jersey printer print the forged Swiss bank documents and typed in the information, that according to the testimony of Werner, Netelkos wanted written assurance that his, Netelkos' checks, would be deposited by Werner and Ezrine gave him such assurance in writing, that Netelkos didn't indicate that he wanted the checks held up from depositing, that Netelkos stated that he had been to Switzerland at least five times for various purposes in 1970 and stated that he went to Switzerland in 1970 with a Mr. Gravis.

Feinberg wants you to remember that Netelkos did plead guilty in this case to one count of the indictment. The remaining 29 counts will be dismissed at the time of sentence, at sentencing, and Mr. Wilson will make a statement on his behalf.

Feinberg points out that Netelkos did in fact pay $210,000 for stock purchased by his corporations in the Manor Nursing Centres public offering.

As to Cullete, Feinberg contends that his testimony is clearly refuted, or rather -- yes, that Mr. Cullere's testimony is clearly refuted as to his purported guarantee by Feinberg, who gave him a $100,000 check. The documentary evidence, according to Feinberg, contained

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in the large brown ledger book, Cullere shows that check No. 1311 was voided the same day that it was issued.

Feinberg argues as to Deneso that the purported payment of $35,000 as to Deneso was clearly a deal between Ezrine and Naiman with regard to which Feinberg claims that he had nothing to do, and Feinberg further contends as to Deneso first that Ezrine brought Naiman of Deneso into the Manor transaction, that Naiman is a convicted felon on at least seven different matters spanning 30 years that Naiman is presently under investigation for criminal matters.

As to the sale of stock after February 20, 1970, Feinberg's position is that the testimony establishes that Ezrine dealt with and sold the stock using Werner & Company to Haber and Daytona Beach General Hospital, that Haber testified that although Feinberg was at Werner & Company's offices at the time he purchased the stock, he never discussed the deal with Feinberg nor could he say whether Feinberg heard what was being discussed with Ezrine.

Finally, Feinberg points out that he dismissed Ezrine as his attorney for SEC matters in December 1970 and on Weiner's advice retained new counsel.

Now, Mr. Delmonico answers the Government's

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claims as follows:

He says that, first, he relied solely on Naiman in the entire Manor transaction because of similar mortgage or loan transactions previously achieved by Naiman in large amounts.

Second, that it was Naiman who entered into, directed and orchestrated the entire Manor transaction on behalf of Deneso.

Third, that Delmonico signed any and all papers in the Manor transaction, whether prepared by Naiman or anyone else solely at the direction and behest of Naiman, believing the entire transaction to be legitimate.

Fourth, that because he believed the transaction to be legitimate, Delmonico accepted on behalf of Deneso $105,000 in checks which turned out to be worthless, and $35,000 in cash as a finder's fee to Deneso for obtaining the loan commitment from the bank based on Naiman's supplying certificates of deposit as collateral for the loan.

Fifth, that when Delmonico found out that Naiman couldn't make good the million seven of Deneso Corporation's checks, he immediately returned all the stock and the $35,000 in cash and that according to the testimony of Naiman Mr. Delmonico never received one thin dime from the entire transaction.

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Ladies and gentlemen, I have now described for you all of the elements of the offenses charged in the indictment and the contentions of the parties. I wish now and finally to instruct you as to certain other few general principles of the law which are relevant to this case.

In this case Mr. Feinberg claims that with respect to much of his conduct he relied on the advice of his counsel, Ivan Ezrine.

In considering Feinberg's knowledge and wilfulness, reliance on the opinion of counsel is properly a factor for your consideration, but reliance on counsel is not in and of itself a defense. Otherwise, any persons involved in a business crime could place the blame on his attorney and thus escape personal accountability under the law for his conduct.

In considering what weight to assign to Feinberg's alleged reliance on counsel you may consider Feinberg's awareness of the terms of the prospectus, the events of the Manor closing as welll as his business background and experience.

Now, throughout my charge I have indicated to you that before you can convict any defendant on any count you must find beyond a reasonable doubt that he acted knowingly and wilfully. An act is done knowingly

and if it is done voluntarily and purposely and not because of mistake accident, negligence or any innocent reason. An act is wilful if it is done deliberately and with a bad motive or purpose.

In determining whether or not a defendant has acted knowingly or wilfully it is not necessary for the Government to establish that the defendant knew that he was breaking any particular law or any particular rule. Knowledge and wilfulness of a defendant often, of course, can't be proved by direct evidence. Like any other fact in issue, however, it may be established by circumstantial evidence.

It is obviously impossible to ascertain or prove directly the operation of a defendant's mind, because you can't look into a person's mind and see what his intentions are, and the only direct evidence you could have of the defendant's intention would be if he told you, "I intend to do so and so," and a defendant doesn't normally say, "I intend to break the law."

But the proof of the circumstances surrounding the transaction may well supply an adequate and convincing basis for a finding whether a defendant acted wilfully. The actions of a man must be set in their time and place, just as the true meaning of a word may be understood

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occasionally only in its relation to other words in a sentence or in its relation to its context.

So the meaning of a particular act or conduct may depend upon the circumstances surrounding it.

In determining whether a defendant acted knowingly and wilfully you may consider whether that defendant deliberately closed his eyes to what otherwise would have been obvious to him. You may consider whether you find in the evidence circumstances of secrecy or intrigue or deviousness or an attempt to conceal the real nature of any of the transactions in which a defendant may have been engaged and you should consider also any acts of innocence which are inconsistent with the defendants acting knowingly or wilfully.

In determining whether a defendant acted knowingly and wilfully you may consider the motive or lack of motive of a defendant. Did he have a pecuniary or financial interest in the outcome of any of these transactions? How great was that interest, if any? Was there a profit motive? Was there any motive? What was the spring of conduct which triggered what he did.

However, proof of motive is not a necessary element of the crimes with which a defendant is charged. Proof of motive doesn't establish guilt nor does

want of proof of motive establish that a defendant is innocent. Motive has to do with why a man acts the way he did. Why he did is not an element of the crime. It may, however, give you evidence as to whether a man acted knowingly and intentionally, and those factors are an element of the crime.

To sustain a charge of a scheme to defraud the prosecution must establish that the defendant acted with fraudulent intent, that is, that he knew the statement or representation in question to be false and he made it or allowed it to be made with intent to defraud.

A defendant is chargable only with his own intent, not that of an other person. Bad faith is an essential element of fraudulent intent and good faith is a complete defense.

A mistake in judgment or an error in management or carelessness doesn't establish fraudulent intent. As I have said above, in order to establish fraudulent intent it must be established that the defendant knowingly and intentionally acted to deceive.

Now, ladies and gentlemen, I have come near the end of my formal instructions but in a sense the most important part of the case is the part which you now are to play as jurors, because it is for you and you alone to

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decide whether Mr. Feinberg or Mr. Delmonico or either of them is guilty of any of the counts charged.

I know that you will try the issues that are presented to you in accordance with the solemn oath you took as jurors, in which you promised that you would well and truly try the issues joined in this case and a true and just verdict rendered.

I like that phrase, "Well and truly try the issues joined in this case." It goes back a thousand years, and its old fashioned flavor reminds us all of the hundreds of thousands of jurys who have performed this function before you.

In order for you to reach a verdict of either not guilty or guilty as to either of the defendants on any count, your verdict, of course, must be unanimous, and for this purpose I have prepared for you verdict lists on which you can record your verdict. I will ask the clerk to give the original of each of these to the forelady, Mrs. Baskin, whom I am asking to serve as forelady in accordance with the customs of this Court.

I have stated that your verdict must be unanimous, but in spite of the requirement of unanimity each of you must decide each count as to each defendant individually in accordance with your own conscience, but only after you have deliberated with your fellow jurors to determine whether a just verdict has been reached.

You should not hesitate to change your mind if you become convinced that your original view of the case was not in accordance with the facts of law.

On the other hand, you should not change your mind just for the purpose of reaching a verdict as a matter of convenience. I have no reason to believe that this jury won't be able to reach a unanimous verdict one way or the other as to the matters put before it.

To sum up, if you find that there is a reasonable doubt that the law has been violated by either defendant as to any count, you should not hesitate for any reason to acquit that defendant as to that count.

On the other hand, if you find that the law has been violated as charged as to any count by either defendant you should not hesitate because of sympathy or any other reason to enter a verdict of guilty as to that defendant for that count.

Nothing that I have said in these instructions,

whatever it may be, and I stress this, is intended to indicate any view of mine toward how the various issues put before you should be decided.

Ladies and gentlemen, as I mentioned before, according to custom, Juror No. 1 normally acts as the forelady of the jury. That doesn't mean that the forelady has any authority that the rest of you do not have, but just that she will assist you in seeing to it that your deliberations are orderly and that all communications to the Court are properly made.

You have the right, Mrs. Baskin and ladies and gentlemen, at any time to ask for any of the exhibits and you have the right to ask that any testimony of any witness be read back to you. You have a right to put any questions that you want to the Court, if there is anything that you don't understand about my instructions or otherwise.

If you do wish to have any testimony read back to you or if you wish any exhibit, it would be helpful if you could be as specific as possible about the material that you are interested in so that we can be assisted in locating the material in the record, which is several thousand pages long, so if there is anything you want to have read to you it will be a great help to have you, as nearly as you can, tell us what it is that you are

looking for. We will look for the material in the record while you continue your deliberations.

The way to get in touch with us is to give a note to the marshal, who will be standing just outside the door of the jury room. I neither encourage you nor discourage your asking for things, but I certainly want you to ask for what you want.

I have come to the end of my charge. I will now meet briefly with counsel in the robing room to see if anything I said needs clarification and I will return to you shortly if you'll just wait in the jury box while we discuss the matter.

[In the robing room:]

THE COURT: Mr. Seidman,

MR. SEIDMAN: Yes, your Honor.

THE COURT: I call on you for any objections or further requests.

MR. SEIDMAN: If your Honor please, with respect to further requests, I would respectfully request the Court that it indicate to the jury that reasonable doubt can be created by the evidence that is in the case or the lack of evidence and it is within the jury's province to conclude that the failure of the Government to produce Mr. Ezrine is sufficient to constitute reasonable doubt and

requires an acquittal of the defendant.

THE COURT: I deny that. If I believed it was true I would already have acquitted Mr. Feinberg.

MR. SEIDMAN: Also, with respect to the mail fraud counts, which are in essence counts 2 through 28, and I include Title 15 and Title 18 -- I respectfully call your Honor's attention to the fact that the testimony in the case indicates that the mailings were established, if they are established, by the testimony of Werner or Netelkos, to wit, that they, except for one percent or ten percent of their business clients, 90% or 99% of their business was done by the mail. I believe that if the jury determines that such is the evidence and that there has been no specific testimony that the specific mailings alluded to in Counts 2 to 28, that in that event a reasonable doubt exists and the defendant Feinberg should be acquitted.

THE COURT: I decline to so charge.

MR. SEIDMAN: I have no other requests, your Honor.

THE COURT: Do you have any objections?

MR. SEIDMAN: No, your Honor.

THE COURT: Thank you very much, Mr. Seidman. I consider that a triumph.

Mr. Schweller.

MR. SCHWELLER: Your Honor, I respectfully ask your Honor to charge that if the jury does not decide on a verdict for one defendant, it can still decide on the verdict for the other defendant and hand that verdict down.

THE COURT: I decline to make that charge at this time. I may make it at a future time if there is any difficulty in the jury reaching a verdict.

However, I am going to suggest to the jury when I return that they take up what they consider the allegations of Count 1 first and that they advise us when they reach a verdict as to Count 1.

I do believe that with regard to this indictment, which is at least theoretically of some complexity, that it would be better for them to consider one count at a time and report the facts.

MR. SCHWELLER: Will you instruct the jury any contentions that Mr. Delmonico did not keep any money either directly --

THE COURT: I said he didn't get one thin dime out of it. I don't think I have to go any further than that.

MR. SEIDMAN: In my zeal as an advocate, your Honor, with respect to my two requests I didn't want your Honor to direct a verdict of acquittal but --

THE COURT: I understand that.

MR. WILSON: I would request that the Court not give the instruction that it indicated. I don't object if the Court asks the jury to consider one group of counts first. I think there may be a problem with just the conspiracy count. I don't know whether the Court ought to direct them to try to wrestle with that. I think it might be best if it was just left unsaid.

THE COURT: No, I am going to say something. I know in the complicated stock fraud cases it is quite normal for the jury to reach a verdict as to one part and then to fumble along.

MR. WILSON: The Government only asks that you not specify.

THE COURT: I will not specify.

All right, gentlemen, thank you.

[In open court:]

THE COURT: Ladies and gentlemen, I don't think there is anything further that I have to say to you except make a recommendation as to how you should go about your work. I would suggest that you decide which group of counts, let's call it, you are going to deal with first, whether it be Count 1 or Count 2 through 14 or Count 15 through 28, but that you work only on that group of counts to begin with. I ask you if you have reached a verdict

in the group, whatever it is, to advise me through the marshal, and then you can go ahead with the next group and so on. There are a couple of other things to be said.

First of all, the indictment as originally filed contained thirty counts, not 28, and two of them for reasons with which you are not concerned have been eliminated. I am going to suggest to counsel, so that you are not confused, that you be furnished with a copy of the indictment that does not contain the other two.

MR. WILSON: That has already been done. We have that available.

THE COURT: Fine.

Finally, a matter of personal comfort to save you time and also in hope that you will be satisfied with it, I am asking the marshal to bring your lunch into you and he will take orders from you as soon as you go back to the jury room as to what kind of sandwiches -- the best we can get for you we will. But this will enable you to get started sooner.

I ask the Clerk now to swear in the marshal.

[Marshal sworn.]

THE COURT: Before you go, ladies and gentlemen, I have the unhappy duty of dismissing the two alternate jurors who have served so faithfully for so long. I hope

they don't feel deprived or cheated, but unfortunately the law doesn't give the judge discretion to allow alternate jurors to deliberate along with the regular jurors.

I want to thank Mr. Iglehart and Mrs. Jackson for their faithful attendance here. They are free to stay in the courtroom if they wish to hear the outcome of the case, or they may feel free to get in touch with me or any members of the jury after it has decided to determine what the outcome was.

Thank you very much. I suggest you get your personal belongings now. The instructions are that you are discharged at this time and the Government will send you a check, which I hope will be a nice, big, fat one. Thank you very much.

[Two alternates excused.]

THE COURT: I will hand the forelady a copy of the indictment.

MR. SEIDMAN: I ask that the indictment be marked as an exhibit for identification.

THE COURT: Mark it as Court Exhibit 1.

[Court Exhibit 1 was marked.]

THE COURT: I am referring to a photocopy of the first 28 counts of the indictment which are the only remaining counts.

All right, ladies and gentlemen, you may begin your deliberations.

[The jury left the courtroom.]

MR. WILSON: We have a mechanical matter. We have never put on the record all the 3500 material turned over to counsel. I don't know if the Court wants to be here, but that has to be done. I would propose to do it at this time.

MR. SEIDMAN: It has been my contention throughout this case that the Government has not furnished us with all of the Brady material that I believe has been in its possession and that belief is predicated upon the fact that Mr. Wilson --

THE COURT: I am not interested in that argument. If you come up with solid facts to establish what you say, all right, but I'm not interested in hunches.

MR. SEIDMAN: If your Honor please, to indicate that such is not a hunch, there is an exhibit in this case that I came upon during the course of the trial by accident. It was a substitution for an original or a photocopy, which indicated that Mr. Ezrine instructed Mr. Weiner to withhold certain papers.

THE COURT: If there is any Brady material discovered by defense counsel which has not been delivered,

you know that you can upset a conviction on it. All you need to do is to specify what exhibit you are talking about and the circumstances.

You have given me generalities in talking about an exhibit. I won't entertain your application until you get it all in order.

With regard to the 3500 material, I would rather not have to be present when that material is listed in the record, so I request Mr. Wilson and defense counsel to review it jointly and if there are any questions on which they disagree, I will rule on those or at least make an appropriate statement for the record.

May I now take the floor for a moment to say that I request counsel in case of requests for exhibits from the jury to agree as to what those exhibits are unless there is any possible question about it and to see that they are transmitted to the jury without my having to be here. I instruct the Clerk and the Reporter to see to it that no exhibits are delivered to the jury except in the presence of all counsel.

I mention that only because, with other personnel, there was a mistake when an exhibit was delivered to the jury when only one of the counsel was present in the room and difficulties were created by that fact.

I will be available, if necessary, for the reading of testimony, but I request counsel to agree as to what the testimony is and where it is to be found in the record before I'm called down into the courtroom for the purpose of listening to it, and where it is clear as to what the testimony is and it is simply a matter of reading it, I may or may not excuse myself, depending on whether or not I think my presence is necessary.

MR. SEIDMAN: May I ask your Honor what the schedule will be, assuming the jury deliberates for any length of time?

THE COURT: I will be going to lunch at the usual time, a quarter of one to two, and then I expect to permit the jury to deliberate until six o'clock, but not beyond six o'clock. Of course I'll call them back tomorrow morning.

MR. SEIDMAN: Thank you.

[Judge Lasker left the courtroom.]

MR. WILSON: May the record reflect that the Government -- Mr. Seidman and Mr. Schweller are now in the courtroom -- has previously turned over the following 3500 material:

3501, the United States Attorney's notes with respect to Robert Crespi.

3502, the United States Attorney's notes with respect to Albert Cullere.

3503, the Grand Jury testimony of Chris Netelkos.

3504, the U. S. Attorney's notes with respect to Chris Netelkos.

3505, a memo of March 1971 with respect to Chris Netelkos.

3506, a letter of November 1971 of Chris Netelkos.

3507, a memo of March 21, 1973 of Chris Netelkos.

3508, notes of Chris Netelkos.

3509, notes of Chris Netelkos.

3510, affidavit of Chris Netelkos.

3511, U. S. Attorney's notes with respect to Harry Pieratos.

3512, Grand Jury testimony of Jack Naiman for April 17, 1973.

3513, Grand Jury testimony of Jack Naiman for April 18, 1973.

3514, U. S. Attorney's notes as to Jack Naiman.

3515, an FBI report 302 on Jack Naiman dated --

MR. SEIDMAN: I never saw an FBI 302 in my life in this case.

MR. WILSON: Mr. Seidman, please don't leave the courtroom.

MR. SEIDMAN: I'm not.

MR. WILSON: Please find your 3500 material, Mr. Seidman, and tell me if you did not receive that, because if you did not receive that I suppose you will want to.

3516, United States Attorney's notes as to Bernard Orlins.

3517, SEC notes with respect to Bernard Orlins.

3518, U. S. Attorney's notes with respect to Bernard Orlins.

3519, U. S. Attorney's notes with respect to Benjamin Werner.

3520, SEC testimony with respect to civil trial of Benjamin Werner.

3521, SEC testimony, deposition of Benjamin Werner.

3522, Grand Jury testimony of Benjamin Werner.

3523, SEC testimony of David Haber.

3524, an affidavit of David Haber dated September 1, 1971.

3525, Haber deposition dated April 17, 1972.

3526, an SEC memorandum dated November 9, 1970.

3527, U. S. Attorney's notes re: David Haber.

3528, civil trial testimony of David Haber.

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The following items were previously marked with the wrong numbers and are being given new numbers.

MR. SEIDMAN: By who?

MR. WILSON: But the matters set forth in them were previously turned over: 3529, the civil court testimony of Mr. Dunham; 3530, the SEC testimony of Mr. Dunham; 3531, the U. S. Attorney's notes of Mr. Dunham; 3532, the Grand Jury testimony of Mr. Beckerman; 3533, separate day's Grand Jury testimony of Mr. Beckerman; and, 3534, the Civil trial testimony of Mr. Beckerman.

These last six items now marked 3529 through 3534 had previously been marked 3523 through 3528 at the times that they were turned over to defense counsel.

That completes the 3500 material that was turned over to defense counsel in the course of this trial.

MR. SEIDMAN: Defense counsel for Ira Feinberg states that when the prosecutor in this case shows all of the physical matters that he has reference to and puts them on the table so that they can be compared page by page and sheet by sheet as to what he has reference to, I will be able to enter into any stipulation he wishes to, assuming the documents and material were furnished.

[Recess.]

AFTERNOON SESSION

1:55 p.m.

(Note received from the jury.)

(Court's Exhibit 2 marked for identification.)

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THE CLERK: The jury wants copies of the indictment and copies of the prospectus. The prospectus is Government's Exhibit 11.

(Recess.)

(2:50 p.m.)

(Note received from the jury.)

(In the robing room.)

THE COURT: I note for the record that we have received one note from the jury at 1:55 which requested extra photocopies of the indictment and copies of the prospectus and I understand that those were given to the jury. I request the clerk to mark that exhibit Court's Exhibit 2.

I have now before me a note received a few minutes ago at 2:55, which I will ask the clerk to mark Court's Exhibit 3 which reads as follows:

"To Judge Lasker: Your Honor, must the jurors find the defendants guilty or not guilty on each specific charge, numbers 2 through 28. (individually)?

"Thank you."

Signed by "Forelady."

Of course, I do intend to advise the jury that they must find the defendants guilty or not guilty on each specific charge individually but I also believe it might help to explain to them what the evidence is in regard to those counts, and I think the Government ought to advise me -- these are the mailings.

MR. WILSON: I am just trying to think what is the point of the juror's note.

THE COURT: Well, never mind what the point of the juror's note is. They want to know that.

MR. WILSON: Well, that's the whole evidence in the case.

THE COURT: No. The mailings.

MR. WILSON: I don't think that is what they are asking about.

THE COURT: Well, I will ask them --

MR. WILSON: I think what they are doing, your Honor, some jurors may say, "He is guilty but do we have to find him guilty on all 28 counts?"

THE COURT: I think they want to know whether they have to make a determination on all 28 counts.

MR. WILSON: The answer is they do.

THE COURT: Yes, or you have a hung jury on those counts. I don't care if they do. If they find a verdict on three or four counts I will take it. But they are required to make a finding on any one count as much as on any other count.

MR. WILSON: I think that is the answer that should be given to the jurors.

THE COURT: On the other hand, I want them to understand that each of the counts 2 through 28 refers to a specific mailing, and if they want to review the evidence on those mailings they are exhibits number so and so and so. I will ask them if they want the exhibits relating to the mailing.

MR. SEIDMAN: If your Honor please, I would object to that, since the jury hasn't requested any exhibits.

THE COURT: I will ask them if they want any exhibits in connection with those counts. They aren't referring to the first count. They are referring to Counts 2 through 28.

MR. WILSON: My best judgment is that the Court should answer the question the way the Court has suggested.

MR. SCHWELLER: I would object to that.

MR. SEIDMAN: I would agree with the

prosecutor, which may be the first time in this trial. But I think the jury's questions should be answered without any embellishment.

THE COURT: Well, this time I agree with Mr. Schweller and not with the two of you, and I am advising you that I will state to them, yes, they are obliged to make a finding with respect to each of these counts and ask them if there are any exhibits that they want with respect to these counts.

MR. SCHWELLER: Will your Honor tell them that they can make a finding on three or four counts?

THE COURT: I have told them and I will remind them that they should concentrate on groups of counts.

MR. SEIDMAN: I would object to your Honor's advising them about three or four counts.

THE COURT: I wouldn't say that, I will refer to "counts."

(Court's Exhibit No. 3 marked for identification.)

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(In open court, jury in box.)

THE COURT: Ladies and gentlemen, I have received a note from you, which states:

"Your Honor, must the jurors find the defendants guilty or not guilty on each specific charge, number 2

through 28 (individually)."

The answer to that is yes, you must make a finding as to each count.

Now, if there is any evidence that you wish particular to those counts, of course, you can simply ask for whatever you want.

This does make me think, though, ladies and gentlemen, that you aren't following the suggestion that I made and which would make life easier for you, which would be to take this indictment and deal with it in what I call groups, that Group 1 consists of Count 1, Group 2 is Counts 2 through 14, and Group 3 is 15 through 28. Any other questions?

JUROR NO. 12: You said deal with it in groups, like Group 2, okay? Each count has to be dealt with, like 2, 3, 4, 5, 6, 7?

THE COURT: That's right. All of the elements with regard to Group 2 through 14 are the same except for the specific mailing in each case. Each one of those counts refers to a different mailing. So you would have to satisfy yourself first that there was a scheme to defraud or a misrepresentation or whatever it was or whatever with regard to the sale of securities and so on, and then if you decide that there was, then you would

have to determine whether there had been the mailings referred to in Counts 2 through 14.

THE FORELADY: Was there direct evidence on each of those mailings in the court?

THE COURT: The Government has put documents in evidence and refers to testimony of one or more witnesses, which would be brought to your attention in that regard if you wish. So the answer to that is yes. It is for you to decide what the evidence means, but the evidence that the Government has put before you constitutes testimony which can be read to you, if you wish it to be read to you, and documents which can be examined by you if you wish to examine them.

(At 3:10 p.m. the jury left the courtroom to resume deliberations.)

MR. SEIDMAN: If your Honor please, I object to your Honor's informing the jury that there was proof or evidence in this case.

THE COURT: I didn't say proof.

MR. SEIDMAN: However, I believe, and I state this most respectfully, that the jury may have inferred that. When I move to dismiss this case after both sides had rested, one of the issues that I raised before the Court.

THE COURT: Was the issue of whether or not there had been evidence sufficient to go to the jury concerning the mailing?

THE COURT: That's right, and I ruled there had been.

MR. SEIDMAN: And I pointed out to your Honor at that time that, as I understand the evidence, that the testimony of Werner --

THE COURT: There is no need for you to repeat what you said. It is in the record. You have a perfect right to object to my statement made to the jury, which I think is perfectly proper, and I think that objection is noted on the record.

Mr. Wilson, I recommend to save time, that you find the evidence that you contend establishes the mailings, so that if the jury asks for it it will be available.

MR. WILSON: That is exactly what I am doing, your Honor.

THE COURT: I will be in the robing room or upstairs. My trial has been called off for this afternoon.

(Recess.)

(At 3:40, a note was received from the jury.)

(In the robing room.)

THE COURT: This note, which is marked Court's

Exhibit 4, reads:

"Judge Lasker: Your Honor, may we have testimony and any evidence regarding, (1), Cosmo Garcia. Testimony regarding delivery of 50 shares of Manor Nursing stock to Thomas Kraft, testified by Mr. Benjamin Werner."

MR. SCHWELLER: Is that the extent of the note, your Honor?

THE COURT: Yes.

MR. WILSON: My only reaction is, where did they come up with those two?

MR. SEIDMAN: I must respectfully state, your Honor, that there is no evidence in this record physically that would demonstrate the mailing, and in addition, if your Honor please, at a prior instruction, which I respectfully ask be read back to your Honor when the jury came back with the prior request, I believe you stated that the prosecutor's contention was that there was such a mailing, but you omottied stating that the defense contention was that there was no proof of such mailing, and it is up to the jury --

THE COURT: I stated it was up to the jury to determine the meaning of the testimony which the Government put before them, and I decline to answer that way, and I will answer the request specified in this note.

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MR. SEIDMAN: I respectfully respect.

MR. WILSON: May I show you the portions of the transcript, your Honor, where this material is?

THE COURT: Yes. Let's get that settled before you call them in.

I also wish to state for the record that after I complied with this request, I will ask whether they have reached a verdict on Count 1. The reason that I will is because they are considering the mail counts. There is at least a possibility that they have reached a verdict on the count that preceded the mail counts.

MR. WILSON: The note, your Honor, refers directly to a Cosmo Garcia, and to Dr. Thomas Kraft.

One of the confirmations constituting part of Government's Exhibit 67 is Cosmo Garcia, and Philip Kraft.

THE COURT: Or is it Thomas Kraft.

MR. WILSON: They also say delivery. They may be referring --

THE COURT: They say delivery.

MR. WILSON: Delivery of 50 shares. The reason they may have picked up that language is that in the indictment we list two kinds of mailings, confirmations and what we call delivery letters, and they are probably referring to the delivery letters, and they are probably

referring to the delivery letter . If I can get the indictment.

THE COURT: They are referring to whatever you have offered them in relation to this subject.

MR. WILSON: And what I would propose, your Honor, that we offer them those two exhibits and read the material found on page 1043 of the transcript.

THE COURT: Now, that refers, page 1043, which is Werner's direct testimony refers to Government's Exhibit 67, which in turn consists of a group of confirmations. Is there testimony in the record which identifies the letter to Dr. Kraft, or D. Kraft. That is Exhibit 68.

MR. WILSON: Yes, and it goes down here, your Honor, where the question is asked --

THE COURT: Just a minute, please. I will ask the reporter to read page 1043 in full.

MR. WILSON: Because, your Honor, I have found in reviewing this, that the question wasn't directly asked in my direct examination about 67 and 68, unless the record is wrong. I would also ask the Court to read them a cross examination question which picks that up. But that would be additional evidence that 68 was also placed in the mail.

THE COURT: I will ask the reporter to read page

1043 and if you will, and page 1183, lines 18 through 25 and I will ask Mr. Seidman whether he wishes any further cross examination to be read. I am not asking the reporter to read the material above line 18 on page 1143.

MR. SEIDMAN: May I ask your Honor why?

THE COURT: Because I don't think it is necessary. If you want me to, tell me why. It is just a rapid fire series of questions which don't seem to get to the nub of the matter until line 18.

MR. SEIDMAN: If your Honor please, I believe that the answer to the questions asked by jurors, using the term "delivery" is a term concerning the workings of the mind, and I don't believe that the Court should use the term "delivery" but merely indicate that there are confirmation slips and copies of letters. There is no proof.

THE COURT: I don't expect to. They have asked for the evidence on these points and I am telling them that this is what I understand to be the evidence on these points.

(In open court, jury in box.)

THE COURT: Ladies and gentlemen, I have received a note from you which I have marked Court's Exhibit 4, and reads: "May we have testimony and any evidence regarding:

"One,Cosmos Garcia, 20 Sycamore Road, Dumont, New Jersey, regarding confirmation of purchase of 100 shares of Manor stock on February 13, 1970.

"Two, testimony regarding delivery of 50 shares of Manor stock to Dr. Thomas or D. Thomas Kraft, 120 Tellison Circle, Pittsburgh, Pennsylvania, March 17, 1970, testified by Mr. Benjamin Werner."

Ladies and gentlemen, the material that you have asked for is as follows:

Government's Exhibit 67, consists of a group of business documents from Benjamin Werner & Company, addressed to various different people. The fourth of such documents is addressed to Cosmos Garcia, at the address that you specified in your note and refers to 100 shares of Manor Nursing Centres, Inc. for $1,000. And it is dated, indicates trade date February 13, 1970.

The eighth of such documents in the exhibit is addressed to D. Thomas Kraft, 120 Tellison Circle, Pittsburgh, Pennsylvania, and refers to 50 shares of stock for the amount of $500 and is dated trade date, February 13, 1970. In addition to that, Exhibit 68 consists of a group of letters addressed by Benjamin Werner Co. to a variety of people, including D. Thomas Kraft, to whom I refer to in particular, because your request for information sometimes

talks not only about confirmation but delivery, and this is a letter to Mr. Kraft which says, "Dear Sir, we enclose herewith 50 shares of Manor Nursing Centres, Inc., serial number CO-11.

Now, to complete the answer to your request, I will ask the reporter to read the relevant testimony of Mr. Werner. The first portion of what the reporter is going to read consists of questions asked by Mr. Wilson on direct, and then there are some questions after that that the reporter will read which were asked by Mr. Seidman on cross examination.

(Record read.)

THE COURT: Ladies and gentlemen, I think that is the testimony and these are the documents relating to that.

JUROR NO. 6: Will you reread the direct.

(Record read.)

THE COURT: Now, Mrs. Baskin, since you are here, and since you have asked questions several times about counts with numbers higher than the first count,, I was wondering whether the jury has reached a verdict as to Count 1.

THE FORELADY: No.

THE COURT: It hasn't. All right. Thank you,

ladies and gentlemen.

Do you wish to take these exhibits with you?

THE FORELADY: Yes.

(At 4:00 p.m., the jury left the courtroom to resume deliberations.)

MR. SEIDMAN: Would you please note my objection.

(At 4:40, a note was received from the jury.)

(Court's Exhibit 5 marked for identification.)

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THE COURT: I have a note from Mrs. Baskin, which has been marked as Court's Exhibit 5 for identification which says, "Your Honor we have reached a verdict on Count No. 1 for Ira Feinberg and we have reached a verdict on Count Nos. 2 through 28 for Joseph Delmonico. We have not reached a verdict on Count 1 for Mr. Delmonico or 2 through 28 for Ira Feinberg."

(Jury in box.)

(Roll call of jurors called, all present.)

THE CLERK: Madam Forelady, how do you find as to Defendant Feinberg on Count 1?

THE FORELADY: We find Defendant Feinberg guilty on Count 1.

THE CLERK: How do you find as to Defendant

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Delmonico on Count 2?

THE FORELADY: We find Mr.Delmonico not guilty on Count 2.

THE COURT: Mrs. Baskin, if the verdict is the same on all of the counts for Mr. Delmonico, you may indicate that simply by saying it is the same. If it is not the same --

THE FORELADY: The same on Counts 2 through 28.

THE COURT: That is not guilty on Counts 2 through 28 on Mr. Delmonico.

THE FORELADY: Yes.

THE COURT: Ladies and gentlemen, I think you very much for doing that much work --

MR. SEIDMAN: Your Honor, might I respectfully request that the jury be polled.

THE COURT: As to Count 1 for Mr. Feinberg?

MR. SEIDMAN: Yes.

THE COURT: Yes, of course.

(Each juror on being asked if the verdict regarding Mr. Feinberg was his or her verdict, responded in the affirmative.)

THE COURT: Thank you, as I was saying, ladies and gentlemen, for the work that you have done to this point. I will have to ask you to continue your deliberations,

but I also want to relieve your anxiety by telling you that we will stay here only until 6:00 o'clock this evening and I don't want to press you in any way.

If you have concluded by that time, very good. If you have not, we will go ahead on a relaxed schedule tomorrow. So will you resume your deliberations and I will be down shortly before 6:00 in case there are any questions at that time.

(At 5:40 p.m., jury in box.)

(Roll of jurors called. All answered present.)

THE COURT: I have received this note from Mrs. Baskin, which says, "Your Honor, we have reached a verdict on all counts for Mr. Feinberg and Mr. Delmonico."

THE CLERK: Madam Forelady have you reached a verdict?

THE FORELADY: Yes, we have.

THE CLERK: How do you find as to the Defendant Delmonico on Count 1?

THE FORELADY: Not guilty.

THE CLERK: How do you find the Defendant Feinberg on Count 2?

THE FORELADY: Not guilty.

THE CLERK: On Count 3?

THE FORELADY: Not guilty.

THE CLERK: On Count 4?

THE FORELADY: Not guilty.

THE CLERK: Count 5?

THE FORELADY: Not guilty.

THE CLERK: Count 6?

THE FORELADY: Not guilty.

THE CLERK: Count 7.

THE FORELADY: Not guilty.

THE CLERK: On Count 8?

THE FORELADY: Not guilty.

THE CLERK: On Count 9?

THE FORELADY: Guilty.

THE CLERK: And Count 11?

THE FORELADY: Guilty.

THE CLERK: On Count 12?

THE FORELADY: Guilty.

THE CLERK: On Count 13?

THE FORELADY: Guilty.

THE CLERK: On Count 14?

THE FORELADY: Guilty.

THE CLERK: And Count 15?

THE FORELADY: Not guilty.

THE CLERK: On Count 16?

THE FORELADY: Not guilty.

THE CLERK: On Count 17?

THE FORELADY: Not guilty.

THECLERK: On Count 18?

THE FORELADY: Not guilty.

THE CLERK: On Count 19?

THE FORELADY: Not guilty.

THE CLERK: On Count 20?

THE FORELADY: Not guilty.

THE CLERK: On Count 21?

THE FORELADY: Guilty.

THE CLERK: Count 22?

THE FORELADY: Guilty.

THE CLERK: Count 23?

THE FORELADY: Guilty.

THE CLERK: Count 24?

THE FORELADY: Guilty.

THE CLERK: Count 25?

THE FORELADY: Guilty.

THE CLERK: Count 26?

THE FORELADY: Guilty.

THE CLERK: Count 27?

THE FORELADY: Guilty.

THE CLERK: Count 28?

THE FORELADY: Guilty.

THE CLERK: So say you all?

ALL JURORS: Yes.

THE COURT: Mrs. Baskin, will you be seated.

Mr. Seidman, I assume you would like to have the jury polled.

MR. SEIDMAN: I don't want to impose on the jury, but I believe I have to.

THE COURT: Ladies and gentlemen, we will call on you to affirm that the verdict as recorded is your verdict.

(Each juror upon being asked if the verdict as recorded was his or her verdict, answered affirmatively.)

THE COURT: Ladies and gentlemen of the jury, the time has now come when I can express to you my deep appreciation of the effort and personal sacrifice that you have made in acting as jurors in this case. You have not only given up a month of your time and listened to a great deal of complex and difficult testimony, but I, in the undreds of cases that I have tried, have never had before me a jury which was more attentive, more studious about obeying its duties, on the whole more prompt or more conscientious than you have been. I know because of the role that I play in the administration of justice and the occasions on which I am called to determine the guilty and

innocence of fellow citizens, that it is a difficult job to conclude anything but not guilty about a fellow citizen.

At the same time, when we are called upon to reach a different verdict it is our obligation to do so and I commended you for having reached the verdict that you have reached. You are excused with the thanks of the Court. As you heard with regard to the alternate jurors, you have no further duties to perform and you will receive a check from the Government and I hope that Mrs. Burgos everything goes well for you and I hope you will let us know whether it is a boy or a girl.

(Jury left courtroom.)

THE COURT: Mr. Delmonico, you are excused. Mr. Schweller, you are excused.

Mr. Seidman, are there any motions that you wish to make at this time?

MR. SEIDMAN: Well, I would like to reserve them, your Honor, if I might.

THE COURT: Yes. I am agreeable to your reserving them, on this condition. That if you wish to make any motions of a serious and substantive nature with regard to the verdict prior to sentencing, any papers, the motion should be made on papers and the papers should be filed two weeks before sentence date and the United States Attorney

should answer them within one week before the sentence date so that I can consider the propositions with the seriousness that they would then deserve.

Now, I am setting a sentence date of January 17th at 10:00 o'clock, and sentence will be either in this room or across the hall. I'm not sure which courtroom I will be using that day, which means that your papers should be filed by January 3rd.

MR. SEIDMAN: If your Honor please, in view of the fact that January 3rd is right past the holidays, and I don't wish to impose on the Court -- and this is purely for my convenience, and I state that for the record -- may I ask for one additional week? I have been away from my practice for four weeks. I am a single practitioner, and I worked until 10:30 or 11:00 o'clock at night --

THE COURT: Under those circumstances I will set the sentencing date for January 24th and you can get your papers in on January 10th. Mr. Wilson, you can get yours in by January 17th.

MR. SEIDMAN: Just one word, your Honor, at the commencement of this trial or a few days before you indicated that Mr. Feinberg's bond restricted him to the State of New Jersey and the State of New York. However, Mr. Feinberg does reside in Florida, and I have no doubt

that he will be present for sentencing. He is a family man, he has three children --

MR. WILSON: I have no objection to it on the extension of the bail limits to Florida.

MR. SEIDMAN: I thank the Court for its attention, and anything I may have said or done --

THE COURT: Although I have disagreed with you on many occasions I commend you for the persistence with which you have defended your client, and I think you are entitled to have that said in his presence, and I commend the United States Attorney for the way this case was tried.

MR. WILSON: Your Honor, with respect to the other defendants who have not been sentenced, does your Honor wish to set a sentencing date.

THE COURT: I s there any reason why all the sentencing shouldn't be imposed on the same date?

MR. WILSON: No, your Honor.

THE COURT: I will set the sentencing on the same date, that you write their counsel and send me a copy of the letter.

MR. WILSON: Yes, sir.

(Adjourned for sentence to January 24, 1974 at 10:00 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Ira Feinberg	1442			

EXHIBIT INDEX

Defendant Feinberg	Identification	In Evidence
Q		1510
R	1523	1525
S	1538	
T	1555	1557
U	1559	1560
V-1, V-2	1561	
W		1565

MINUTES OF SENTENCE

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

6758 -
Lawyers DISTRICT COURT
FILED
FEB 3 - 1975
S. D. OF N. Y.

THE UNITED STATES OF AMERICA	
- vs -	73 CR 464
IRA FEINBERG,	

24 January, 1975

Appearances:

For The Government: HOWARD WILSON, Assistant United States Attorney

For The Defendant: IRVING SEIDMAN, ESQ.

- o -

(44)

(In Open Court)

THE CLERK: United States of America versus Ira Feinberg. Is The Government ready?

MR. WILSON: The Government is ready, Your Honour.

THE CLERK: Is the defendant ready?

MR. SEIDMAN: Defendant is ready.

THE COURT: Mr. Wilson, of course you know how detailed my information is in this case, and I have received The Government's memorandum with regard to some of the defendants in this case, so I don't intend to call on The Government at this time, unless there is anything exceptional that you feel was not included.

MR. WILSON: No, Your Honour, I think all the material that we had in our possession has been included in the report and the conclusions that The Government reached from that material has also been included in the report.

THE COURT: All right. Mr. Seidman, without intending in any way to limit anything you wish to say I want to make it clear to you and Mr. Feinberg that I have read every item of every paper submitted to me in his behalf, whether your own statement -- was it yesterday? -- or any letter from Mr. Feinberg's faimly, that

includes his parents, his wife, his children, his friends and many of his employees, and I say that only so that you know that I have and proceed on that assumption.

MR. SEIDMAN: If Your Honour please, there is probably no more difficult chore for an attorney than to appear with a client who has either pled guilty or been found guilty after a jury trial.

I would like to call to The Court's attention, as I am sure The Court is well aware of, that these events occurred in 1970 and some approximately five years have gone by since then. I have personally not particularly with this particular case, but with other matters, I have done extensive reading with respect to sentencing alternatives that are available to The Court, and I have no doubt that The Court similarly has from its vast experience and reading dealt in this area.

If I understand the sentencing process I believe that it is intended not to destroy, but to permit an individual to move forward subsequent to a mistake which has violated the law and seek to build a wholesome life for himself and his family.

In all of my reading and studying I believe that the facts of this case most respectfully, I submit, would indicate a sentence of probation. If there were any ques-

tion in my mind concerning whether it is a study of the American Law Institute's Model Penal Code, or the ABA standards concerning sentencing, probation or Judge Frankel's recent book in this area, the only aspect that conceivably has to be considered in depth is the aspect of depreciation of crime with respect to Mr. Feinberg.

Mr. Feinberg appears here before The Court as a first offendor. The fact, I submit,that Mr. Feinberg stood trial I believe is something that both the ABA standards and the American Law Institute Model Penal Code in this area are not considerations that are to be -- this may be inartful in my terminology -- held against him.

THE COURT: I quite agree. Not only that that is what they say, but with the merit of that position.

MR. SEIDNAM: Most importantly I believe is the past five years that have taken place and passed since the occurrence of this event. I believe The Court has before it a full probation report which I have -- pre-sentence report which I have read. I believe that report which is unbiased and objective, whereas I am an advocate and although I do not believe the prosecutor in this position should be an advocate, the sub-

mission of certain material to The Court would indicate that the prosecutor is in the situation of an advocate, for the past five years, I believe, have proven that Mr. Feinberg has, (a) acknowledged his wrong and, (b) sought to live a wholesome life within the parameters of what society says is a lawful life.

I believe the probation report indicates that both the trustee for the stockholders in this matter and the trustee for the receiver in bankruptcy have indicated that during this period of time Mr. Feinberg has assisted them in every form, shape or manner to salvage for the public the debacle that arose from this public offerring.

I believe they indicated that they found him to be truthful, honest, hardworking and a man to be trusted. That cooperation, I believe, even commenced prior to the indictment in this matter. The mistakes that people make in life are things that certainly they should be punished for and I do not seek to minimize or condone the actions in this case with respect to the breach of trust with respect to the public -- as it related to the public offerring.

However, I do believe that once Mr. Feinberg became aware at least intellectually in his mind that what

he had done had violated the law, he bent every effort to rectify the situation and salvage whatever he could for the public who was injured in this matter.

To a large extent I believe if I were to use numbers it would be at least ninety-five per cent I believe that anyone who lost any money in this matter has been fully recompensed. That, however, may be immaterial to The Court's determination concerning sentencing in this matter.

I would hope and pray that the humanistic aspect of every aspect of life even if it is the criminal justice process would apply to Mr. Feinberg. I do not believe that Mr. Feinberg is a public figute. I sincerely do not believe that this matter has in any way received any notoriety which could hold Mr. Feinberg out as an example to the general public with respect to people who would have a like mind to commit similar crimes. And the past five years have shown that Mr. Feinberg can live within the framework of society wholesomely, constructively in a manner that is beneficial to his family and to himself.

He has had no prior involvement with the law. I believe The Court could place its confidence in the sentence of probation whereby if The Court determined that at a future date there was some happening that Mr. Feinberg

violated that probation, it certainly could treat with him in a manner that the law permits.

However, I am certain that Mr. Feinberg will not appear in this court or any other court in any criminal proceeding. In my vast experience I do not believe that I have met a client who has suffered more emotionally from his wrongdoing than Mr. Feinberg.

I believe the interests of justice and the interests of the defendant would be served best if The Court could see in its ultimate wisdom and in the quite of consideration of the probation report absent counsel, the prosecutor, and treat Mr. Feinberg in that humanistic relationship of being an individual with a family who for the past five years since the happening of this event has led a wholesome and constructive life.

I believe he does have something to contribute to society. I believe he desires to contribute. As a matter of fact, his desire for achievement is what probably led him into this problem. However, I think the past five years have evidence that whatever excesses may have existed in that desire to achieve in the business world are aptly and properly within control.

I state that because of the fact of the surrounding aspects of this case and others involved in it, and the

history of Ira Feinberg in the past five years I think substantially corroborates the probation -- the pre-sentence report which in every respect I believe would indicate a sentence of probation.

I also wish to thank The Court for having listened to me now and previously, and I would hope that Mr. Feinberg would be treated and I am sure such is the case, as an individual as a human being and not purely and simply as something that has some other esoteric or conceptual meaning with respect to the aspect of depreciation.

This is one of the few cases that I appear before The Court where I believe that the defendant appears before it where he has reaped no profit from this whether he intended to or not being immaterial in the sence that he does not -- in essence stands here with open hands and not being in a positionwhere he seeks the mercy of The Court, and at the same time seeks to keep the profit of his wrongdoing.

THE COURT: To tell you the truth, in most of these things that go awry people don't end up making much money anyway. A few rascals have got away, but not many.

MR. SEIDMAN: I don't dispute that, Your Honour,

but we at least believe what we read in the paper.

THE COURT: It occurs to me, I hate to interrupt you -- that you have a motion pending which I have also read and entertained. Mr. Wilson, do you wish to make any statement with regard to that motion?

MR. WILSON: Your Honour, we believe most of those matters were covered during the course of the trial. Most of the items called for sufficiency of the evidence arguments, the other items were ruled upon either by Judge Bauman or yourself in the course of the trial, and that the mositon should be dismissed or denied.

THE COURT: Well, on the merits of the propositions put in your motion and for the reasons stated by Mr. Wilson the motion is denied, and I take it that you have completed your statement?

MR. SEIDMAN: Yes, Your Honour.

THE COURT: Thank you.

Mr. Feinberg, you know that you have the right to say anything that you wish to The Court. I have come to know you somewhat in the course of this litigation, but I would be very glad to hear anything you wish to say at this time.

THE DEFENDANT: I can't add too much to what Mr. Seidman has said. I have just tried to do everything

I could to get everybody back to where they were in 1970.

THE COURT: Mr. Feinberg, I may talk a little longer on the occasion of your sentencing than that of the other people involved in the case, because there is no point in my repeating five times my general observations with regard to the proposition as a whole.

I feel that I know it pretty well by now because I not only learned about it first when Mr. Ezrine pleaded guilty and acquainted me with some of the facts, but we lived together for months learning the facts of this case. Whether it is proper as Judge Motley called it, to classify it as a monsterous fraud or not is perhaps irrellevant. I think I would use another adjective to describe what I believe was the conduct of the principals in this case, anyway, and that was, raw.

As I see it, and I want to use a calm voice because I believe in the bible's injunction even for a Judge that he judge, not that he be not judged. It is my job to say what I think. I think that the attitude here was that of a century ago, which is, the public be damned. And I think what would have happened here if these events had not come to light would have been robbery.

I think I have to look at the situation in that light. I think I have to note the distinction between

the long involved orations in favour of white upper class, middle upper class defendants who have suffered so much, as they have indeed, by the time they come to trial, and the short acceptant attitudes that the black and Puerto Rican defendants who come into this court generally display and expect.

Gentlemen, if there is anything -- one thing that I firmly believe in is that we cannot have one law for the rich and one law for the poor, and it is also time for all of us, and I say us because most of the people in this room look to me as if they roughly had pretty much the same kind of life that I did, a decent education, an opportunity at least to make it without being under the pressure that so many other people are in society, time for us to realize that when we break the law it is just as serious as when somebody steals from a bank or when somebody sells narcotics or whatever it may be.

Now, having said that I also want to say particularly in reference to Mr. Seidman's references to the Model Penal Code and the American Bar Association Standards for minimal justice that I believe and publicy stated at a conference of the Second Circuit, the official Judicial Conference of The Second Circuit this fall in which I participated and worked on sentencing, that the

shortest sentence is the best sentence, that the least imprisonment is the best sentencing policy. I do not believe in this case that I can, however, acquiesce in the view that probation is sufficient. I believe, and this applies in almost every instance with the possible exception of Mr. Naiman's unique history, that there is at least one and perhaps only one reason, but a compelling reason for the imposition of custodial sentences on the defendants in this case with the exception of one, and that is deterrance. And I mean not so much individual deterrance, but Mr. Feinberg, I agree, I don't expect you to do this again, I know you are an intelligent man, I believe that you have learned your lesson, I believe that you have sufferred a great deal, I believe that you are a fine employer and father. But, it will not be credible to the world at large that the laws of The United States mean what they mean if on every occasion, and it exists on every occasion, that a defendant comes up for sentencing the Judge accepts it that a man has learned his lesson.

I have never, never yet in seven years sitting on the bench here, which must be hundreds of cases now, not heard or failed to believe the sincerity of the man standing before me, that he has learned his lesson.

Now, to turn to your own particular case, it

is my practice, which I followed in this case, not only of course after thinking long and hard about what is fair in these matters and reading every single scrap of anything that was submitted to me, but of preparing a sheet in which is listed the offence, possible penalty, the unfavourable factors, the favourable factors and the sentence.

I mention that only so that you all will not think that this is an impulsive activity of any kind. In this case the charges are too numerous to cause people the pain of remembering.

The penalty on count one is five years or ten thousand dollars. The penalties on counts nine through fourteen, on which there was a finding of guilty, are two years each and ten thousand dollars. And on twenty-one through twenty-eight, five years each and/or ten thousand dollars.

Even if those matters be considered duplicitous, that is the second group, it is obvious that the penalty here could be enormous. Against you, as I said before, Mr. Feinberg, is what I said before, the nature of the crime. As I view it it is a form of larceny, or embezzlement to tell people that you won't keep their money unless you get enough so that they can make a go of it, that is,

your business can make a go of it, then to know that you get one-sixth of what you promise the public you would require and in effect keep it.

In your favour is the passage of time, the good works you have done for the community, the responsibility that you have assumed as so many of us have, your family, including your wife, daughter, and what I must agree is an impressive reputation for honesty and kindness as an employer as witnesses by numerous letters from your employees, impressive letters from your family and friends and I say partially in your favour is the substantial restitution that you have made, and I say partial because after all that didn't occur until after the litigation, Court orders and everything else, and it must be judged somewhat differently from a situation in which you might on your own have said, Damn it! this was a terrible thing, I shouldn't wait for a court to tell me what to do, I should put the money down and pay people back.

Well, enough is said. It is adjuged that on each of counts one, nine through fourteen and twenty-one thrrough twenty eight the defendant be committed to the custody of The Attorney General or his authorised representative for aperiod of eighteen months. The sentence

is to run concurrently and not consecutively.

Now, Mr. Feinberg, I wish to advise you that you have a right to appeal from your conviction, and also in that sense a right to appeal from your conviction, and also in that sense a right to appeal from the imposition of this sentence.

If you don't have the funds to enter a notice of appeal I will order The Clerk of The Court to do so on your behalf. I believe you probably do. In any event, I assume that there will be an appeal from the conviction here.

MR. SEIDMAN: If Your Honour please, I asure you that I as counsel --

THE COURT: And under the circumstances, unless The Government gives me any reason to the contrary I am agreeable to leaving the bail arrangements for Mr. Feinberg as they are.

MR. WILSON: We have no objection, Your Honour.

MR. SEIDMAN: Thank you, Your Honour. Your Honour, might I respectfully reserve my right to make certain motions concerning special provisions with respect to 2408? You see, I don't recall if I have the number right.

THE COURT: Are you talking about 4802 (a) 2?

I'm not sure what kind of motions are involved there. Let me say that you can always move for a reduction of sentence, and that can fall within such a motion, maybe that's what you have in mind, I don't know. I say always, I mean --

MR. SEIDMAN: Would Your Honour consider such an application presently?

THE COURT: Not at this time. You have four months from the time that an appeal is denied to bring the issue to my attention.

MR. SEIDMAN: Thank you, Your Honour.

MR. WILSON: Your Honour, for the record, I believe that counts twenty-nine and thirty were severed as to Mr. Feinberg. At this time The Government would consent to a motion to dismiss them.

THE COURT: All right, I will assume the motion to be made and it is granted.

I (We) hereby certify that the foregoing is a true and accurate transcript to the best of my (our) skill and ability from my (our) stenographic notes of this proceeding.

Official Court Reporter
U. S. District Court

JUDGMENT

United States of America vs.

United States District Court for SOUTHE DISTRICT OF NEW YORK

6915

DEFENDANT IRA FEINBERG

DOCKET NO. 73 cr 464 MEL

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date → MONTH 1 DAY 24 YEAR 75

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL Irving P. Seidman (Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [X] NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of [ ] NOT GUILTY. Defendant is discharged [X] GUILTY.

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly did directly and indirectly use by means of the U.S. mails in the connection with the sale of securities, employ schemes to defraud, make untrue statements regarding the securities and conspiracy so to do in violation of Title 18, U.S. Code, Section 371, Title 15, U.S Code, Sections 78j(b) and 78ff, Rule 10b(17 C.F.R., S240.10b-5) and Title 18, U.S. Code, Section 2, Title 18, U.S. Code , Sections 1341 and 2.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of (18) EIGHTEEN months on each of counts 1, [redacted], 9, 10, 11, 12, 13, 14, 21, 22, 23, 24, 25, 26, 27, and 28 the sentence to run concurrently on each count and not consecutively.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

MICROFILM

JAN 29 1975

U.S. DISTRICT COURT FILED JAN 24 1975 S.D. OF N.Y.

SIGNED BY

[ ] U.S. District Judge

[ ] U.S. Magistrate

1-24-75

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

-v-

IVAN A. EZRINE, IRA FEINBERG, et al.,

Defendants.

----------x

INDICTMENT
73 Cr. 464

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that IRA FEINBERG, Defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the Judgment of Conviction on December 9, 1974, convicting the defendant of the following counts of the indictment, Count I, in violation of Title 18 U.S.C. Sec. 371, Counts 9-14 in violation of Title 15, U.S.C., Sections 78J(b) and 78FF, Rule 10B-5 (17 C.F.R. 240 10b-5 and Title 15, U.S.C. Sec. 2 and Counts 21-28 in violation of Title 18, U.S.C. Sections 1341 and 1342, and from the Order sentencing the Defendant, IRA FEINBERG, on January 24, 1975, to a term of imprisonment for a period of eighteen months.

Dated: New York, N. Y.
January 29, 1975

RUBIN, SEIDMAN & DOCHTER
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Attorney for Defendant,
IRA FEINBERG

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